No. 6535

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of RENFRO-WADENSTEIN, a Corporation, and RENFRO-WADENSTEIN FURNITURE COMPANY, a Corporation, Bankrupts.

WALTER S. OSBORN, as Trustee in Bankruptcy for RENFRO-WADENSTEIN, a Corporation, and RENFRO-WADENSTEIN FURNITURE COMPANY, a Corporation, Bankrupts,

Appellant,

vs.

KETCHAM & ROTHSCHILD, INC., a Corporation, and ROBERT W. IRWIN COMPANY, a Corporation,

Appellees,

and

KETCHAM & ROTHSCHILD, INC., a Corporation,

Cross-Appellant,

vs.

WALTER S. OSBORN, as Trustee in Bankruptcy for RENFRO-WADENSTEIN, a Corporation, and RENFRO-WADENSTEIN FURNITURE COMPANY, a Corporation, Bankrupts,

Cross-Appellee,

and

ROBERT W. IRWIN COMPANY, a Corporation,

Cross-Appellant,

vs.

WALTER S. OSBORN, as Trustee in Bankruptcy for RENFRO-WADENSTEIN, a Corporation, and RENFRO-WADENSTEIN FURNITURE COMPANY, a Corporation, Bankrupts,

Cross-Appellee.

Transcript of Record.

Upon Appeal and Cross-Appeals from the United States District Court for the Western District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL OF RECORD.

For ROBERT W. IRWIN CO., a Corporation, and KETCHAM & ROTHSCHILD, INC., a Corporation:

POE, FALKNOR, FALKNOR & EMORY, 977–80 Dexter Horton Bldg., Seattle, Washington.

For W. S. OSBORN, Trustee of the Estate of the Bankrupt Corporations:

EGGERMAN & ROSLING, 1824–26 Exchange Building, Seattle, Washington.

In the District Court of the United States for the Western District of Washington, Northern Decision.

IN BANKRUPTCY—No. 9085.

In the Matter of RENFRO–WADENSTEIN, a Corporation, and RENFRO–WADENSTEIN FURNITURE COMPANY, a Corporation,

Bankrupts.

CERTIFICATE ON REVIEW.

I, Ben L. Moore, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That in the course of the proceeding the question arose whether petitioners Robert W. Irwin Company and Ketcham & Rothschild Company,

claiming as consignors to have furnished certain merchandise to the bankrupt corporation on consignment, were entitled to recover from the trustee in bankruptcy (1) certain merchandise in the possession of the Trustee, (2) certain accounts receivable (and the proceeds thereof) in the hands of the Trustee, representing sales made by the bankrupts prior to bankruptcy of certain furniture alleged to belong to petitioners as consignors, and (3) certain cash in the hands of the Trustee received by him from S. T. Hills, as assignee for the benefit of creditors.

The petitions were separate but were heard at the same time on the same evidence.

An order was entered denying both petitions, and in due time petition to review said order was filed herein.

SUMMARY OF EVIDENCE.

TESTIMONY OF ROBERT W. IRWIN, FOR PETITIONERS.

ROBERT W. IRWIN, a witness on behalf of petitioners, testified in substance as follows:

I am president of Robert W. Irwin Company, of Grand Rapids, Michigan, which at the time of the execution of the consignment agreement was operating two furniture plants, one called the Royal and the other the Phoenix. The Royal plant turned out higher grade furniture than the Phoe-

(Testimony of Robert W. Irwin.)

nix. (Dep., p. 13.) For about two to [2*] five years prior to April 1, 1928, we had been selling furniture of our manufacture on open account to Renfro-Wadenstein Co. (hereinafter called Dealer). (Deposition, p. 3.)

The Dealer had become very much in arrears in the payments on its account, and as a result of our efforts to get the accounts in proper shape, Mr. Wadenstein, president of the Dealer, went to Grand Rapids in November, 1927. At that time the Dealer owed us approximately $20,000.00, of which approximately $8,000.00 was for goods shipped during the year 1927 and the balance was for goods shipped prior to 1927. (Deposition, p. 4.)

Mr. Wadenstein proposed to liquidate the account by paying $2,000.00 a month commencing in November, and to try and work out some plan in the spring, before the removal of the Dealer to its new store, whereby we would be justified in extending credit for goods for the new store. (Deposition, pp. 4, 5.)

The Dealer made two payments,—one of $2,000 in November, 1927, and one of $2,000 in December, but made no other payments until some time in April after the consignment agreement was made. (Deposition, p. 5.)

In March, 1928, we received an order from the Dealer, through our traveling salesman, Mr. Ferris, for over $15,000.00 of goods. I wired them upon

*Page-number appearing at the foot of page of original certified Transcript of Record.

(Testimony of Robert W. Irwin.)

receipt of that order that we would not be able to ship until further payments had been made. (Deposition, p. 5; Petitioner's Ex. 14 and 15.)

About this time, in March, I had a conference about this matter, in New York, with Mr. Jack Rothschild, president of Ketcham & Rothschild, whose situation with reference to the extension of credit to the Dealer was about the same as ours. (Deposition, p. 8.)

I had a second conference with Mr. Rothschild in Grand Rapids, where he came to see me about this because he was going to Seattle. In this conference I suggested to Mr. Rothschild that [3] if agreeable to the Dealer, we might consent to enter into a consignment contract. With that in mind I drafted a form of contract and gave it to Mr. Rothschild, authorizing him to act in our behalf in negotiating for some arrangement, subject, however, to our final approval. (Deposition, p. 6.)

Mr. Rothschild went to Seattle, where he arrived in March, 1928. (Deposition, pp. 6, 16.)

About March 27th or 28th, I received the letter from Renfro dated March 23d, 1928 (Petitioner's Ex. 26), and enclosed with it the contract (Petitioner's Ex. 27). (Deposition, p. 17.) When the two copies of the contract were thus received by me they had been executed by the Dealer but the date was blank. I wrote the date April 1, 1928, in the contract and immediately executed it on behalf of my company. (Deposition, pp. 17, 19.) I retained both copies of the contract in my possession

until September 5, 1928, when I sent one of these copies back to the Dealer. (Deposition, pp. 44, 61, 84.)

(Note on Petitioner's Exhibits 26 and 27: Exhibit 27 is the so-called consignment contract. It bears date April 1, 1928, and provides that Robert W. Irwin Co., therein named as first party, shall furnish goods to Renfro-Wadenstein Co., named as second party therein, on the terms and conditions therein set forth.

Paragraph nine of this contract recites and provides, in substance, that Renfro-Wadenstein has in its possession certain goods "as per attached list" which had heretofore been sold and delivered to it by Robert W. Irwin Co. on credit and had not been paid for; that the title to said goods "is hereby transferred and conveyed back" to petitioner and shall hereafter be treated as having been delivered to Renfro-Wadenstein "on consignment and under and subject to [4] all of the terms and conditions of this contract"; and that in consideration of said transfer and conveyancce of the title of said goods back to the Robert W. Irwin Co. "that company (the Irwin Co.) does hereby cancel" the indebtedness of Renfro-Wadenstein for said goods.

Exhibit 26 is the letter of March 23d, 1928, written by Renfro-Wadenstein. It refers in particular to paragraph 9 of the contract and provides that Renfro-Wadenstein will furnish,

(Testimony of Robert W. Irwin.)

shortly after the first of the month, an inventory of the Irwin Company's merchandise on hand, and will also furnish a "bill of sale which will act as a transfer back to your company of this merchandise" and that any difference in the amount of the account will be taken care of in three equal payments, thirty, sixty and ninety days.)

The bill of sale referred to in the letter of March 23, 1928, was not finally executed by the Dealer until August 6, 1928, and was received through the mail by us on about August 10th or 11th. (Deposition, p. 23; Petitioner's Ex. 28.) This was never filed for record. (Petitioner's Ex. 28.)

Between April 1, 1928 (the date of the agreement), and August 6, 1928 (the date of the list or bill of sale), correspondence was taking place between our company and Renfro-Wadenstein endeavoring to get a correct list that we were willing to accept. (Deposition, p. 23.)

On April 28, 1928, the Dealer sent us an inventory or bill of sale of the goods of our make in its hands on April 27th. (Petitioner's Ex. 36.) This included more goods in value than the amount they owed us. On May 4th I wrote them a letter calling their attention to this fact, stating that the bill of sale was not in accordance with out understanding; suggesting that they retain title to all the Phoenix merchandise "and as much of [5] the Royal as will leave the balance the amount of our account less the cash payments which it was arranged with

(Testimony of Robert W. Irwin.)

Mr. Rothschild that you will make"; and saying further, "Please have the bill of sale corrected in this manner and return it to us and we will forward the consignment arrangement as arranged for with Mr. Rothschild." (Petitioner's Ex. 38; Deposition, pp. 6, 31, 32.)

On May 22 the Dealer wrote to us saying, "We are also enclosing a sixty and ninety day note for the amount of the Phoenix account and will treat this as a separate item, leaving the bill of sale in force on the Robert W. Irwin line, if this will be satisfactory to you." (Deposition, p. 33, Ex. 40.)

On June 4, 1928, I wrote to the Dealer as follows: "The notes that you enclose are satisfactory as payment on the new deal but the bill of sale of the Royal goods should be reduced to represent the amount of your debit balance, after deducting these two notes." . . . . "We cannot see our way clear to take back title to more of the Royal merchandise than this account represents. We are enclosing herewith a list of items amounting to $14,490.45, which we suggest you convey to us by the bill of sale, and this will clear the records under the new arrangement." . . . . "Please have the bill of sale made out in this manner and send to us, and we will send you promptly the consignment contract." (Deposition, p. 36; Petitioner's Ex. 43.)

On July 24, 1928, I wrote to the Dealer as follows: "We have had no reply to our letter of June 4. We feel that this matter should be put in final form

(Testimony of Robert W. Irwin.)

without further delay. We returned to you the bill of sale and in our letter of June 4 gave you the list of items the title of which, according to our books, should be included in the bill of sale. What about the settlement for the sales which you have made since this arrangement really became effective? So far we have had no report of sales, [6] with settlements, according to the terms of the contract. . . . . " (Petitioner's Ex. 46; Dep., p. 39.)

Under the April 1st agreement when the Dealer sold this consigned furniture, it was to have made a cash remittance, and if unable to make a cash remittance to give us a demand note collateraled by accounts receivable. On August 4, 1928, the Dealer wrote us a letter enclosing us a report of sales with two notes in settlement of the goods sold under the April 1st contract. (Petitioner's Ex. 48; Dep., pp. 41, 40.)

This was the first and only payment or attempt to make payment of any kind under the April 1st agreement. (Dep., p. 41.)

On August 11, 1928, my company wrote the Dealer acknowledging receipt of its sale report of August 4, and said "This mode of settlement is not exactly in accordance with the stipulations of the agreement, covering the settlement of merchandise sold from the special account. In taking this matter up with Mr. Irwin he feels that inasmuch as we are furnishing the merchandise, we should receive cash settlement for all sales. However, in this instance,

(Testimony of Robert W. Irwin.)

we will accept the settlement tendered." (Petitioner's Ex. 49; Dep., p. 42.)

On August 24, 1928, Dealer wrote a letter to us enclosing what purports to be a statement of the merchandise of our make that they had on hand July 28. I do not know just the object of sending that list unless it was to reconcile our books with theirs. It purports to include the goods that came under the agreement of April 1st and were shipped under that agreement and those which we took back title to. (Dep., p. 43; Petitioner's Ex. 50.)

On September 5 I wrote to the Dealer: "We are duly in receipt of the corrected bill of sale of Royal goods and enclose herewith a copy of the consigned agreement." (Petitioner's Ex. 51; Dep., p. 44.) [7]

The bill of sale referred to in my letter was that list of August 6. (Dep., p. 44.)

The letter of September 5, 1928, also stated: "There were three items on the list of foods reported sold which were your property as they were not included in the re-transfer of title to us. We refer to two No. 1287 tables, one No. 1337 and one No. 1355."

The Dealer's report included certain items of furniture which were not covered by the April 1st agreement, so in the enclosure in our letter of September 5 I made that correction and enclosed a list which covered the furniture pursuant to the April 1, 1928, agreement. (Dep., p. 47; Petitioner's Ex. 51.)

(Testimony of Robert W. Irwin.)

Note: Petitioner's Ex. 56, comprising the invoice of goods shipped subsequent to April 1, 1928, shows that the above-mentioned items No. 1287 and No. 1337 were invoiced under date of April 13, 1928, and No. 1355 under date of April 24, 1928. These three items are the only items shipped subsequent to April 1 on which the Dealer ever made any report or accounting to the Irwin Company.)

On September 5, 1928, I sent the Dealer its copy of the April 1st agreement. I had held these copies on my desk with the other papers pending the getting of a correct list of the goods that we took back title to, and which is referred to in paragraph nine of the agreement. (Dep., p. 45.) Between April 1 and August 6, 1928, we had not yet agreed on the items on the list as a whole, which was later incorporated in the bill of sale. (Dep., p. 61.) But prior to that date, and between April 1st and this date, we operated under the April 1st agreement. (Dep., p. 45.)

The final outcome of our correspondence with respect to the amount of furniture which should be included in the bill of sale as follows: The Dealer owed my company about $116,000, of which $14,490 was owing for Royal furniture. The Dealer, by the list or bill of sale, re-transferred to us furniture amounting to said sum of $14,400 and gave us two notes representing the balance of the account. One of these notes was paid, the other was not, when due. The amount the Dealer paid

(Testimony of Robert W. Irwin.)

by notes was in full payment of the Phoenix account. (Dep. pp. 22 and 23.) [8]

Unless the Dealer had either executed the April 1st agreement and the bill of sale or paid what was due on the old account, we would not have shipped any goods on the so-called Ferris order or any other furniture. (Dep. pp. 44, 56.)

Beginning with September, 1927, up to the time we released the Ferris order we made the following shipments of goods to the Dealer: September, 1927, $130.00; October, $140.00; November, $120.00; December, none; January, 1928, none; February, none; March, none; April, $12,523.50; and May, $2,214.00. (Dep. p. 8.)

Petitioner's Exhibits 55 and 56 show the invoices of Phoenix goods and invoices of Royal goods, respectively, shipped by us to the Dealer after the execution of the agreement of April 1st, 1928.

> (Note on Exhibits 55 and 56: The only shipment of Phoenix goods after April, 1928, was an invoice of $14.00 dated July 30, 1928. The only shipments of Royal goods after May, 1928, were the following: August 8, 1928, $118.00; August 20, 1928, $185.00.)

The last shipment of merchandise was made August 20, 1928. (Dep. p. 73.)

My only knowledge of the Dealer's financial condition was as stated to me by Mr. Wadenstein when he was in Grand Rapids in November, 1927, and also a report received by me dated January 1, 1928. I relied on those representations as to the financial

(Testimony of Robert W. Irwin.)

condition of that company. If I had had knowledge that they were in a bad way financially I would not have entertained the execution of the agreement which was made on April 1, 1928. (Dep. p. 55.) On April 1, 1928, the Dealer owed us something between $16,000 and $17,000. (Dep. pp. 55, 56.)

Prior to my receipt of the list of furniture set forth in Petitioner's Exhibit 28 (bill of sale dated August 6, 1928) I had no knowledge as to the failure or insolvent financial condition of the Dealer company. Directly to the contrary, I had a financial [9] statement from them as of January 1 which showed that they had assets of $230,580.52 with liabilities of $129,839.42, leaving an equity in capital and surplus of $100,741.10. (Dep. p. 24. This was the information contained in their statement enclosed with their letter of March 6, 1928. (Ex. 18, 18a.) It was the only knowledge I had of their financial condition. (Dep. p. 25.)

It was not an unusual thing for us to receive a request from the Dealer that payment of their account be deferred. It was a common request and we were extending their payments from time to time. We were accepting new notes in lieu of old ones because we had confidence in the ultimate outcome of their business. At the time of these transactions I knew the Dealer was behind with the payment of its bills and I assumed that they did not have the money with which to meet these things because they had not paid us. (Dep. pp. 58, 90, 91.) I was not concerned about the financial condition

(Testimony of Robert W. Irwin.)

of the Dealer company until I had notice of their putting Mr. Hills in as assignee. At the time we entered into the proposed agreement of April 1, 1928, I knew that they did not have a sufficient amount of money to operate upon the scale upon which they were operating and pay their bills promptly but I had no thought that they were in danger of failure. (Dep. p. 68.)

I knew at that time they were not only not paying their bills promptly but they were very much in arrears in the payment of their accounts. (Dep. pp. 68, 69.)

The consideration for the agreement of April 1, 1928, was that we would continue to ship them more goods. We were unwilling to ship any more goods on open account and we did not. (Dep. p. 24.)

There was no intent on the part of the Irwin Company by the execution of this agreement and the accepting of this list or the so-called bill of sale to prefer itself over other creditors of Renfro-Wadenstein. (Dep. pp. 25, 44, 56.) [10]

The obtaining this bill of sale from the Dealer transferring to us merchandise which had previously been sold on open account was the basis of an arrangement for future payments to secure the extension of credit to the Dealer. We did it to relieve them from that much indebtedness. We agreed to take back title to that amount to reduce their indebtedness to that extent so that we might have a basis for extending further credit. We had no thought of more security. We were laying the

(Testimony of Robert W. Irwin.)

basis for credit for future business. We were trying to develop a basis whereby there would not be a limitation in credit so we would be justified in shipping them goods from time to time. If we held title to the goods and if they paid for them as fast as sold we felt we would be justified in backing them with merchandise to the maximum extent in their new enterprise. We would be in a better position if we held title to the goods. The thought we had in mind was that we would be more secured that way than otherwise because their financial condition did not warrant us in extending to them as large a credit as they would need to handle our goods upon the scale that they were willing to handle them and we were looking for an outlet for our goods in that territory. We were willing to let them have as much merchandise as they thought they needed, as they would be willing to pay for, and as one of the methods of securing safety of our account. (Dep. pp. 63, 64.)

Subsequent to the execution of the April 1, 1928, agreement the Dealer never lived up to its agreement in the matter of its accounting. We had only one report of sales. (Dep. pp. 25, 27, 28.) The only sales report that they sent us was the one in which they sent a note settlement. We accepted that note settlement but wrote them that it was not in accordance with the terms of the contract and that hereafter we wanted them to comply with the terms of the contract, making their reports and settlements as [11] provided for in the contract.

(Testimony of Robert W. Irwin.)

(Dep. pp. 25, 26, 44 to 46 and Petitioner's Ex. 51.)

We did not receive from the Dealer any cash remittance nor any notes collateralled by this assignment of accounts as provided in the agreement of April 1, 1928. (Dep. pp. 26, 53.) We wrote them and asked them to comply with the agreement. (Dep. p. 26.) Under the contract the Dealer was to make a cash remittance and if they were unable to make a cash remittance they were to give us a demand note collateralled by accounts receivable.

There were no payments made by the Dealer for any furniture shipped subsequent to the execution of the April 1st agreement except as contained in the notes of August 24, and those notes were not paid (Dep. pp. 52, 73), and we still have them. We accepted these notes because they didn't seem to be able to do any better at that time and we had confidence in the men and the business and were willing to give them a little extra time until they could get started. (Dep. p. 53.)

My company did not at any time authorize the Dealer to assign or pledge any accounts representing any goods covered under the agreement of April 1st which were shipped after the agreement was executed, neither did we authorize the Dealer to sell any of the accounts receivable representing the goods sold by the Dealer which had been obtained from us under the April 1st agreement. (Dep. pp. 53, 56.) We had no knowledge that the Dealer was pledging these accounts receivable representing furniture sold by them which had been

(Testimony of Robert W. Irwin.)

shipped to them by us subsequent to the execution of the agreement. Prior to April 1, 1928, I had knowledge that the Dealer had a practice of pledging its accounts receivable. I obtained that information from M. Wadenstein when he was in Grand Rapids in November, 1927. Analyzing his statement, I noticed something in the statement that made me ask him the question and I developed the information from him that they were pledging their [12] accounts receivable. Later, in January or February, I had a communication from him stating that he had an arrangement with his landlord through which he could pledge his accounts receivable. To provide against that practice a paragraph was inserted in the agreement of April 1st because of the knowledge I had of the practice he had been pursuing. (Dep. p. 54.)

We coined the term "special account" for designating on our books the account of the goods that we shipped to the Dealer on consignment under the terms of the April 1st agreement. (Dep. p. 42.) The goods that were shipped after that contract was executed were shipped to Renfro-Wadenstein, Special Account, and at a later date when the list was finally completed and accepted by us we transferred the items to the amount of that list from the regular Renfro-Wadenstein account to this new special account. (Dep. pp. 43, 52, 85, 86.) We did not at any time instruct the Dealer as to the price at which they should sell the merchandise. (Dep. p. 95.) Outside of the contract

(Testimony of Robert W. Irwin.)

of April 1st itself, we never entered into any arrangement with the Dealer whereby this merchandise was to be kept separate and apart from any other merchandise, nor as to the manner in which it should be displayed or exhibited. I think it would have to be intermingled with other merchandise sent to them from other concerns in order to make the best display for sale. The was nothing on our merchandise, to my knowledge, that would indicate that it had been sent to the Dealer in any manner other than by a straight sale. The merchandise was shipped direct to the Dealer, bill of lading mailed to the Dealer, and I assume that they presented the bill of lading to the proper carrier, and picked up the merchandise. (Dep. p. 66.)

After the Dealer sold the merchandise we made no effort to find out what they did with the money.

We had a contract with them and they were to make settlements [13] with us in accordance with the terms of the contract. (Dep. p. 75.) I don't know whether this money was or could have been deposited with their other moneys in the bank. They were several thousand miles away. I assumed they were men of integrity and would carry out the terms of the agreement that they had signed. Outside of the agreement of April 1st we had no arrangement that they were to segregate their funds received from the sale of this merchandise. (Dep. pp. 75, 76.) The Irwin Company at no time subsequent to April 1, 1928, ever consented that the Dealer should treat the furniture shipped

(Testimony of Robert W. Irwin.)

by my company to them under the April 1st agreement as if it had been shipped on open account or credit (Dep. 27), nor did it ever exercise its option under the contract to require the Dealer to keep and pay for consigned goods remaining on hand. (Dep. pp. 91, 92.)

SUMMARY OF ROTHSCHILD TESTIMONY.

TESTIMONY OF EMIL ROTHSCHILD, FOR PETITIONERS.

My name is Emil Rothschild and known as E. J. Rothschild. I am president of Ketcham & Rothschild, engaged in the furniture business in Chicago. My company commenced doing business with the bankrupt in about 1922. I made a trip to Seattle in March, 1928. (Tr. 17.) Prior to coming out here in March I had two conversations with Mr. Robert W. Irwin of the Robert W. Irwin Company. One of these was in New York City and the other was at Grand Rapids within the week prior to my coming here. I went to Grand Rapids particularly to go into conference with Mr. Irwin on the subject of this account. My purpose in coming here to Seattle was to work out some scheme whereby we might extend to the Dealer company credit to the extent of its needs. (Tr. 18.) We had both been extending a very liberal line of credit to the Dealer. (Tr. 119, 120.)

At the time of my conference with Mr. Irwin the Dealer owed us approximately $16,000 or $17,000 and a similar sum to Mr. Irwin. (Tr. 121.)

(Testimony of Emil Rothschild.)

At that time all their account with us was covered by notes. (Tr. 19, 31, 121, 122.)

Mr. Irwin and I were in agreement that our interests [14] were very much alike and our positions very much the same, and he rather decided I should try to work out some scheme that would be agreeable to Renfro-Wadenstein and that I thought was best for our two concerns and whatever form of arrangement I might make for ourselves he thought would be agreeable to him. (Tr. 19.)

Mr. Irwin made the draft of the contract which we contemplated. (Tr. 142.) He and I discussed several ways that would make the account of Renfro-Wadenstein a satisfactory one and the method of extending credit to them, and we discussed various ways of accomplishing that. We discussed some as to whether we would ask them to reduce the amount of the business. Each of us had an order on file unfilled waiting our decision as to the further credit, and Mr. Irwin suggested that he had quite satisfactorily taken care of an account in New York by applying a contract which he produced a copy of, and he said it might be a good plan to put these goods on consignment, to which I replied Ketcham & Rothschild did not do any consignment. He suggested at times it might be a safer way where you are extending a longer credit and read over the form he had used in some account he had in the east, and from that he said, "why not take along with you a copy of the draft?" He drafted

(Testimony of Emil Rothschild.)

a copy that I took with me from parts of the contract he had used in New York. (Tr. 143, 144, 183, 184.) I got here approximately March 20 and was here four nights. (Tr. 19.)

A written agreement between the Dealer and our company was signed by Mr. Wadenstein who gave it to me on March 23, 1928, together with the attached letter dated March 23, 1928. (Petitioner's Ex. 1; Tr. 20, 30.) The contract and the letter were signed at the same time. I had given them a draft of the agreement that would be agreeable to us and attached to it a memorandum of omissions they had apparently made in drawing the contract. (Tr. 23.) Paragraph 9 of the consignment agreement recites that the Dealer has in its possession certain goods as per attached list (Tr. 24), but there was not any list attached to the consignment [15] agreement at any time. (Tr. 25.) I did not sign the contract here for my firm but took it back east with me. (Tr. 35.) When the Dealer handed the contract to me it had already been signed by them in my presence and the date was left blank. They actually signed it on March 23. My firm signed it in Chicago on March 30 and the date March 30 was inserted by J. W. Rothschild. (Tr. 26.) At the time the consignment agreement was signed by the Dealer we did not know exactly what furniture was on their floor; we knew there was an approximate quantity in dollars and cents. No list of our furniture on their floor specifying as to items was given to me while I was here in March

(Testimony of Emil Rothschild.)

but the approximate figure was taken from their stock cards and rendered. (Tr. 30, 88.) Subsequently they gave us a bill of sale back for the furniture of ours which was on their floor. This furniture had been sold to them on open account and was their furniture prior to the execution of the bill of sale. (Tr. 31.) We received notes from the Dealer to take care of the difference between the amount of furniture sold back to us and the amount of the indebtedness. We received this approximately the end of April or perhaps in May. (Tr. 31.) We received an inventory in the form of a bill of sale dated April 16, 1928. (Tr. 31; Petitioner's Ex. 2.) This bill of sale was subsequently corrected on April —— and filed for record in the office of the Auditor of King County, Washington, on April 24, 1928. (Tr. ——.)

After the receipt by us of the bill of sale the indebtedness of the Dealer to us for the goods covered by the bill of sale was cancelled. (Tr. 37.)

The Dealer wrote us a letter April 28 enclosing a remittance sheet and inventory dated April 27. (Tr. 41; Petitioner's Ex. 4.) In the letter the Dealer stated that they had taken the difference between the amount of merchandise they were returning [16] to us and the amount of indebtedness they owed us prior thereto and "divided it into thirty, sixty and ninety day notes, which will take just a little more time than our agreement . . . . " (Tr. 42, 43; Petitioner's Ex. 4.) Enclosed in that letter was what is termed a remittance sheet dated

(Testimony of Emil Rothschild.)

April 27 and also an inventory dated April 27. The inventory included all merchandise they had on hand of our make including that covered in the bill of sale, whether it belonged to them or to us, and also included the merchandise which we had subsequently shipped to them on special account. (Tr. 45, 46.)

The remittance sheet refers to notes for an indebtedness previously incurred. (Tr. 46, 47.) The reference in the remittance sheet to the two invoices of April 2 and April 7 was for merchandise we shipped them on consignment account after the consignment agreement. (Tr. 47.) We had completed our transactions with them by receiving the bill of sale dated April 16 but we accepted their figures on April 27 as being correct and made our book entries in harmony with it. (Tr. 53.)

We made a special invoice back to the Dealer in the total sum of $11,695 for the goods contained in the bill of sale. (Tr. 68.) This was one way we gave evidence of the consignment. (Tr. 69.) Under the consignment contract we consigned to the Dealer on April 2, 1928, goods amounting to $4,569; on April 7, $1,257; on May 10, $282; on May 14, $656.-56; on May 18, $106.33. We made no other consignments to the Dealer. (Tr. 70, 71; Petitioner's Ex. 9.)

At the time of my conference with Mr. Irwin in Grand Rapids I had with me the detailed statement as of December 31 and he had one that pre-dated that. We compared the figures on them and com-

(Testimony of Emil Rothschild.)

mented on the fact that the disparity of figures was no doubt occasioned by the amount of bills receivable they borrowed on, [17] and he thought it would be well for me to come out and see what opportunity they had and determine whether or not I thought it was a desirable account to continue. (Tr. 146.)

I had not come in close contact personally with Mr. Renfro and Mr. Wadenstein except occasionally and I was anxious to get a close-up of what they were like, their mannerisms and method of doing business and make some local inquiries about them. From the local inquiries which I made I considered that with the assistance of factories like Mr. Irwin's and our own, and the equity they had in the business they had a good chance of becoming a very good firm. (Tr. 147.) We thought the Dealer had insufficient working capital. (Tr. 186.)

In that conversation Mr. Irwin told me that as far as he was concerned he would not ship any more merchandise on open account unless I found their condition was better than he deducted from the statements he had before him and unless I discovered some way which would make him feel secure. (Tr. 187.) After I looked over the ground and made inquiries I decided in our interest and in Mr. Irwin's interest to bring up the question of consignment with the Dealer. (Tr. 191.) We had always granted them permission to settle their account by note when due, net, and they continued to do that. (Tr. 194.)

(Testimony of Emil Rothschild.)

From their statement I had no doubt that they were solvent and that we could terminate our contract if we deemed that the best arrangement. I did not think of the arrangement in the sense of its being safer for us to take the furniture back and then consign it to them. I thought it was the simplest way to handle the bookkeeping. In the new way it would be a better mode of knowing when payment was due. (Tr. 150.)

This was a departure from our general practice of selling merchandise. We were not accustomed to selling on consignment. [18] We naturally preferred the routine open account. (Tr. 151.) We sell to 300 retail furniture stores throughout the United States. Of those two are on consignment,—one at the time we entered into this contract. (Tr. 153.)

We took back the bill of sale from the Dealer according to our contract and proposed to leave it with them to sell for us. We did not have any intention or idea at that time of making any disposition of the furniture other than through Dealer. (Tr. 168.) Conditions could arise when we might. (Tr. 169.) Some of the furniture had been on the Dealer's floor a considerable period of time and there had been some style changes and obsolesence. (Tr. 169.)

We shipped the Dealer no furniture in December 1927, January, February or March, 1928. (Tr. 138, 176.) The shipment we made on April 2 was on orders that we got from them the end of February,

(Testimony of Emil Rothschild.)

1928, or the early part of March. (Tr. 176.) Our total shipments, subsequent to the consignment agreement, aggregated about $6,000. (Tr. 179.) In our dealings with the Dealer after the execution and return to us of this consignment contract we did not give the Dealer an option to return the furniture at any time they elected. There was no change in the contract in that regard. (Tr. 181, 182.) The contract provided that they were not to sell for less than the invoice price, but any price above that was at their election at all times. The Dealer at all times was required to pay the freight. (Tr. 182.)

Every time they had a note due they would renew the note or send notes for new invoices. I objected to that up to the time I found they thought they were working on this frozen credit. (Tr. 121.) Our conditions were not the same as Mr. Irwin's firm. They had succeeded in getting some cash remittances in amounts of $2,000. each. The exact number I don't recall. (Tr. 121.) The Dealer owed us $16,000 evidenced by notes. Sometimes in advance [19] of maturity of these notes and sometimes after maturity they would send us renewals. For a long time I was in doubt whether they were working under our frozen credit special arrangements or whether they were still buying at 2%—30 days, net 60 days, and I have a distinct recollection of writing them some time in 1927, perhaps more than once. (Tr. 122.)

When they continued constantly sending us re-

(Testimony of Emil Rothschild.)

newal notes I wrote them it was very inconvenient to receive renewal notes at times past the date they were due and in consequence the notes themselves went to protest. (Tr. 123.)

Very late in 1927 or early in 1928 we received a letter from the Dealer in which they stated that according to the special terms we had made them they had more merchandise on the floor than what they owed us in the form of bills receivable. It is very likely we had billed them out in regular terms until we found definitely they were working under what we saw fit to call a "special arrangement". (Tr. 123.) After we sent the letter outlining the terms of the frozen credit we continued to bill them on the usual terms of 2%—30 days.

We were much amazed that they sent us notes at the maturity of the invoice. (Tr. 124, 125.) We kept the notes and gave them to our Chicago bank, and we presume they sent them out. In a number of instances those notes were protested. (Tr. 125, 126.)

It is hard to make a flat statement whether in a great majority of instances the Dealer in 1927 and early part of 1928 was meeting its obligations simply by asking us to accept renewal notes. When Mr. Wadenstein wrote us making it evident he was working under our frozen credit we wrote them to send us renewal notes in time to take up the ones we had. (Tr. 126.) The frozen credit was up to $15,000. (Tr. 134.) In February and March, 1928, they had less merchandise on the floor than they

(Testimony of Emil Rothschild.)

owed us money. (Tr. [20] 136.) About the middle of February, 1928, they owed us on open account $4,388.50 and on bills receivable $12,873.53, or a total of some $17,000. (Tr. 137.)

According to their statement to us they had $14,-331.28 merchandise of our make on hand as of date December 31, 1927. (Tr. 138.) At some time before I came out to Seattle in March, 1928, I knew that the Dealer was assigning its accounts to discount companies. (Tr. 139, 140.) Mr. Irwin and I discussed that feature of the situation. We were not necessarily dissatisfied with it. We didn't approve or disapprove. It was none of our concern provided they were good. (Tr. 140.)

From my conversation with Mr. Irwin I learned that they had not paid their accounts to him as promptly as he felt they ought to pay. (Tr. 140, 141.) I wouldn't want to say that they never did pay on the due date; I wouldn't want to say whether or not he told me of any instance where they did pay on the due date. We did not go into it. He told me that the account had been settled for usually by notes and it had taken on a pretty good sized proportion and that he had asked them to reduce it some and that they had agreed to go ahead and make some payments to him at so much per month. He said they had some payments but had stopped making them again. (Tr. 141.)

During 1927 we extended to the Dealer what might be called a frozen credit. (Tr. 113, 114.) In 1927 some of our invoices to the Dealer had words "terms special" written thereon. (Tr. 116.)

(Testimony of Emil Rothschild.)

These special terms at that time referred to our arrangements for a so-called frozen credit, the terms for which are set forth in Trustee's Exhibit "A," the letter of the Dealer dated March 11, 1927 to us, and our letter in reply thereto dated March 22, 1927. In the last-mentioned letter we stated the terms as follows: " . . . . We suggest as a credit arrangement that we grant [21] you a standing credit of whatever sum you may have invested in samples of our goods, up to $15,000, you to pay interest at the rate of 7% for the use of this credit; the amount of interest due to be determined and payable at each inventory time. We would want to reserve the right of closing this special credit at any time by giving you notice in writing, in which case the credit granted for sample purposes would become due for payment net, one year from the time of such notice, interest ceasing from the time of our giving notice. In addition to the credit above suggested we would make the terms for your further purchases subject to terms 2%—30 days, net 60 days, with a 30 day dating." (Tr. 116, 117.)

For a long time I was in doubt whether the Dealer was working under our frozen credit special arrangement or whether they were still buying at 2% —30 days, net 60 days (Tr. 122), and the reason we were not sure was because they kept remitting for these accounts with notes. We did not interpret that as the proper method of following this frozen credit. When they continued to do so and constantly sent us renewed notes I wrote them it

(Testimony of Emil Rothschild.)

was very inconvenient to receive renewal notes at times past the date that they were due and in consequence the notes themselves went to protest. (Tr. 122, 123.) My idea of the frozen credit was that we would extend them a credit for merchandise which would remain as indebtedness from them to us up to $15,000 that they would use toward having samples to that value on their floor. Any merchandise they bought in excess of that sum or that was not to be on their floor *the* would pay in their usual terms 2%—30 days, net 60 days, 30 extra. (Tr. 125, 170, 171, 173.)

I was never quite sure until some time later that they had accepted our proposed arrangement for a frozen credit. I believe it was some time in October, 1927, that I was sure they were [22] working under that arrangement. The frozen credit arrangement was terminated when I was here in Seattle, by mutual agreement that we would do away with the frozen credit and work under a different plan, namely, the consignment contract. (Tr. 193.)

During 1928 after the consignment agreement we carried with the Dealer what we termed a direct charge account and also a special account. (Ex. 20, letter dated June 2, 1928, Ketcham & Rothschild to Renfro-Wadenstein.)

The purpose of the special account was to show on our books the status of the merchandise we had on consignment with Renfro-Wadenstein. (Tr. 81.) The special account was set forth in the several appropriate books of account and its purpose was to

(Testimony of Emil Rothschild.)

show on our books the status of the merchandise we had on consignment with Renfro-Wadenstein. In order to record all our consignment sales in one place we kept, in the regular course of business our "Consignment Sales Account No. 201" (Ketcham & Rothschild Ex. 9), which contained entries of the Renfro-Wadenstein account together with those of other dealers. After the consignment agreement under our practice of bookkeeping the Dealer was never billed direct for the merchandise sent on consignment until the goods were reported sold. (Tr. 52.)

Our first shipment of goods on consignment to the Dealer was on April 2, 1928; prior to that everything had been sold on open account. (Tr. 110.) We adopted this designation on our invoices "Terms special" to indicate a consignment arrangement in accordance with the consignment contract. (Tr. 110.)

In 1927 the printed form of our invoices contained the words "terms 2%—30 days, or net 60 days." (Tr. 111.)

It was well understood that we would keep our affairs as closed as we could to our office force and to the business public and so as to not have the exact terms under which we were shipping [23] merchandise disclosed to everybody around our place we adopted the expression "special" to denote goods shipped on the special arrangement we had made with the Dealer. (Tr. 112.) In our invoices of October 20, 1927, we invoiced merchandise to Renfro-Wadenstein "terms special"; that was to

(Testimony of Emil Rothschild.)

indicate the frozen credit arrangement which we had with the Dealer at that time. (Tr. 113.) Another reason for billing the consigned goods "terms special" was that we did not want the invoices laying around before employees of Renfro-Wadenstein who might shift from place to place, or any other firm. I would not stress as my reason our disinclination for our own office force to know the exact terms; we were not as near fearful of our own office force as we were of that part that might be transient and go to different firms. (Tr. 178, 179.) The term consignment appears in our ledger, to what extent I cannot say. (Tr. 178.) It was open to the knowledge of certain portions of our office force that some goods were shipped on consignment. (Tr. 179.)

I never at any time consented to the Dealer pledging or assigning any accounts receivable representing merchandise of ours which had been sold. At no time prior to the time that I was notified that Mr. Hills had taken possession of the concern was I cognizant of the fact that they were assigning or pledging accounts receivable of ours, representing furniture sold which had been left with them under the consignment agreement. I do not know in definite figures how much merchandise was sold by the Dealer and not accounted for to us. (Tr. 106.) Prior to the time I entered into the consignment agreement I had been advised that the Dealer was assigning or pledging its accounts receivable for furniture sold on open account. I did not at

(Testimony of Emil Rothschild.)

any time have any knowledge that the accounts receivable representing the consigned merchandise were to be or had been pledged or hypothecated or assigned. (Tr. 202.) [24]

August 24, 1928, Renfro-Wadenstein wrote us a letter in which they said: "We are not able to enclose a check with this report but will try to do so during the coming week. We do not like to drag along this way on our remittances but collections and business during the summer months, as you undoubtedly know, are difficult, and we will just have to do the best we can." The last paragraph of their letter is as follows: "Possibly you do not realize that under our method of carrying accounts, we have to carry a substantial reserve on these and altogether we have quite a little money tied up in accounts receivable."

In reply to that letter we wrote Renfro-Wadenstein on August 28 a letter in which we stated: "We must express extreme disappointment that you did not enclose check with statements. We notice particularly the last paragraph of your letter, and would have you understand that we are thoroughly acquainted with how you are carrying your accounts, which makes it all the more difficult for us to understand why we should not receive our money promptly when due. In the manner you are treating payments to us, you not alone have the use of our merchandise, but presume to use in addition to it, cash returns that you must receive for goods sold. This is so apparently unfair, that you will

(Testimony of Emil Rothschild.)

readily understand our protest against your doing so. If we are to work in harmony it will be absolutely necessary for you to make your settlements in accordance with the agreement which we mutually decided would be agreeable. We would thank you to send us remittance for such amounts as are now due for payment." (Petitioner Ketcham & Rothschild's Ex. —— and ——, Tr. pp. 203, 204.)

While I was aware of the fact that Renfro-Wadenstein were in the habit of borrowing on their bills receivable I could not see what bearing that had on any merchandise we had out there that belonged to us, that they could not borrow on any more than [25] I could on this Smith Building. (Tr. 204.) My letter means that they were borrowing on their accounts receivable but ours was not one of their accounts receivable.

The Dealer would have to wait thirty, sixty or ninety days, or longer, to get money for its goods sold if it was not paid in cash. Some of Renfro-Wadenstein's business was on open account and some on contract, but I do not know the proportions. (Tr. 206.) We did not have any prohibition on the Dealer that it could not sell any of this furniture on conditional sales contract, but I believe it is a condition in the contract that we held title to the property until we were paid for it. (Tr. 208.) The Dealer could sell on conditional sales contract. This is my first experience in sales on consignment. (Tr. 208.)

I don't know whether the consigned goods were kept separate and apart from the rest of the Deal-

(Testimony of Emil Rothschild.)

er's goods while they were on the Dealer's floor. (Tr. 107, 108.) We are in the habit of putting a small paster containing our name and pattern number on the bottom side of the seats. We have been more recently in the habit of putting on a metal tag reading "Ketcham & Rothschild—Chicago." We use numbers to designate the pieces. (Tr. 108.) This tag or label is one that we are in the practice of putting on all our furniture and we did not adopt that practice for these particular shipments. There is nothing in the tag which we put on the furniture to indicate that it was delivered to the Dealer under any unusual conditions other than a direct sale. (Tr. 109.)

During 1927 and 1928 we shipped all the furniture by bills of lading direct to the Dealer. After the consignment arrangement we made no distinction in the mode of shipment so far as bills of lading were concerned. (Tr. 118.)

We never at any time sought to hold the Dealer for the invoice price of the goods left on consignment with it but not [26] sold by it. We did not at any time receive any notes collateralled by any assignments from the Dealer. They paid us for all goods which they reported sold. (Tr. 107.) These payments were made in cash excepting one which was made by note. (Tr. 78.) So far as direct charges against the Dealer are concerned, the account would be closed on receipt of the note and the action or treatment of that note later on would be a second transaction. They were all satisfied.

(Testimony of Emil Rothschild.)

(Tr. 79.) As fast as goods were reported sold to us in accordance with their contract we made a direct charge for the amount of the reported sales, crediting the consignment account and their special account. (Tr. 75, 80, 82.)

We would receive from the Dealer a monthly statement of the furniture sold and then would immediately bill them a direct charge giving them a discount of 2% payable the 20th of the following month. (Tr. 130.) The dealer sent us a statement of goods sold dated June 10 (Ketcham & Rothschild's Ex. 22, Tr. 100.) and a statement of goods sold dated July 28 (Ketcham & Rothschild's Ex. 37, Tr. 104).

Under our practice of bookkeeping the Dealer was not billed direct for merchandise sent to it on consignment until the goods were reported sold by the Dealer. (Tr. 52.)

We did not at any time seek to hold the Dealer for the invoice price of the goods left on consignment with them but not sold by them. At my instance there was served on the bankrupt and on the Trustee the notice terminating the consignment contract and demanding the return of the goods. (Tr. 107.) [27]

TESTIMONY OF O. A. WADENSTEIN, FOR PETITIONERS.

I was president of Renfro-Wadenstein, a corporation organized approximately eleven years ago. Originally it was called Hanson-Wadenstein

(Testimony of O. A. Wadenstein.)

Desk Company, then changed to Renfro-Wadenstein Desk Company, and later changed to Renfro-Wadenstein. At the time the petition in bankruptcy was filed its place of business was at 5th and Pike in Seattle, and it was engaged in the retail furniture business handling what would be known as the better grade of furniture. We moved into our store at 5th and Pike approximately April 4, 1928. (Tr. 214, 215.) Prior to that we had been located at 5th and Virginia. For approximately five years prior to the petition in bankruptcy we had had business relations with the petitioner Ketcham & Rothschild and also with the petitioner Robert W. Irwin. Ketcham & Rothschild was located at Chicago, Ill., and manufactured upholstered furniture of a high grade. Robert W. Irwin Company was engaged in the manufacture of high grade bedroom furniture and dining-room furniture. (Tr. 215, 216.) Prior to the latter part of March, 1928, we had brought considerable furniture from both of those concerns. (Tr. 216.)

Prior to the last of March, 1928, our general terms of purchase from those two concerns were that we were to have permission to settle at the end of sixty days. Our usual terms upon invoice were 2% thirty, net sixty. In making our purchases we had requested and it had been granted that we were to have the privilege of settling for those invoices with ninety day notes at the expiration of sixty days, which would give us five months. This arrangement was sometimes oral and very often referred

(Testimony of O. A. Wadenstein.)

to in writing. (Tr. 217.) About once a year Mr. Renfro and I would visit the factories and explain the necessity of having plenty of credit. [28]

Our credit was not even limited to ninety days. The factory understood we would frequently ask them to accept a note. What we were asking them to do was to help us carry the amount of furniture it was necessary to display on our floors. (Tr. 219.)

After we would return from these periodical trips to the creditors' place of business there would be no change on the terms on the invoice and the question of additional time by notes would be referred to and embodied in subsequent letters exchanged between us. (Tr. 220.) We explained that we were operating a larger business than our capital would justify; that we would like to carry these lines of merchandise and that in order to have these lines of merchandise it would be necesssary for us to have more than the usual terms of credit. (Tr. 227.)

These conversations would generally be had with Mr. Irwin at Grand Rapids in the case of the Irwin Company and with Mr. E. J. Rothschild at Chicago in the case of Ketcham & Rothschild. (Tr. 228.) Just prior to the time of the execution of the consignment agreement our concern owed these concerns just roughly $15,000 each. (Tr. 228.) Just prior to the execution of the consignment agreement our credit arrangment with Ketcham & Rothschild was the one under which we had an understanding that they would extend credit up to approximately $15,-

(Testimony of O. A. Wadenstein.)

000. As to any frozen credit arrangment with Robert W. Irwin Company I don't think there was any amount definitely agreed upon. When we visited Mr. Irwin and would go over our accounts with him we generally referred to about the amount they were then carrying us for which happened to be about the same amount. (Tr. 229.) When I visited Mr. Irwin in November, 1927, we agreed to pay at least part of our account by making payments of $2,000 a month. (Tr. 229, 230.)

Mr. E. J. Rothschild visited our store in March, 1928. That was the time the consignment arrangement was entered into. (Tr. 230.) [29]

He was here two or three days just a short time before the agreement was signed. As nearly as I can remember we signed the Ketcham & Rothschild and the Irwin agreements before he left. (Tr. 233.) I am quite sure Mr. Rothschild took them away with him. (Tr. 234.) At the time the consignment contract was entered into Mr. Rothschild did not have an exact list of the furniture to be conveyed back in accordance with paragraph 9 of the consignment agreement. (Tr. 235, 237, 238.) We went over our stock record to arrive at the approximate amount. (Tr. 238.) It would have been necessary for us to take an inventory to furnish him at that time with an exact itemized list of the Ketcham & Rothschild furniture on our floor and we did not have time to do that while he was here. (Tr. 238.) At the time Mr. Rothschild was here it was not known either to Mr. Rothschild or to us what were the spe-

(Testimony of O. A. Wadenstein.)

cific goods which would be conveyed back to the Irwin Company in accordance with the agreement. (Tr. 238, 239.) This was for the reason that we did not have a list. (Tr. 239.)

I wrote the letter of March 23, 1928, which is attached to the consignment agreement as Petitioner Rothschild's Exhibit 1; I wrote this on the date it bears. (Tr. 239.) I have not any way of telling whether this letter of March 23 was signed by me at the same time the consignment agreement was signed; I am not clear as to whether this contract was signed when Mr. Rothschild was here or not. (Tr. 241.) When Mr. Rothschild was here these consignment arrangments were drawn up and these bills of sale were drawn up for both companies. In the case of Ketcham & Rothschild they were drawn up and signed when he was here but in the case of Irwin he merely went back and made his report to them and this matter I think continued for several months before the Irwin Company sent the bill to be executed. (Tr. 429, 439, 440.) The consignment agreements were both signed while Mr. Rothschild was [30] here and the bills of sale were subsequently prepared by us. (Tr. 429, 430.)

I had tried to get Mr. Rothschild to fill the pending orders under the same arrangements which they had made previous shipments and they did not want to do that unless we cleaned up the old account. (Tr. 430.) I know that Irwin and Ketcham & Rothschild were not just exactly easy about the account. It ran into quite a little money and we had not been able to pay it as well as we expected and we were

(Testimony of O. A. Wadenstein.)

perhaps a little too optimistic in the way we handled the account, and in the discussion we finally evolved this plan. I presume it may have been an ultimatum that they said "No, we will not ship any more unless we can protect ourselves in some way," but I don't remember that. (Tr. 431.)

The reason for the delay in finally executing the Robert W. Irwin bill of sale was that when the first bill of sale was mailed to them we had a letter from Mr. Irwin stating that it contained more merchandise than he agreed to have turned back to them. There was some correspondence back and forth in regard to that and we finally arrived at the amount by taking all of the merchandise that was shipped by the Royal division of the Robert W. Irwin Company. We agreed to keep the Phoenix furniture and to pay for this. It was shortly after we had moved. Our letters were delayed somewhat and I think their letters were delayed somewhat, and that time just naturally elapsed before the matter was completely covered. (Tr. 274, 275.)

Practically all the concerns with whom we did a considerable volume of business gave us extended credit, permitted us to settle on about the same basis as we settled in the case of these two concerns. By extended credit I mean the right to pay at the expiration of the invoice with a ninety day note subject to part renewal as a rule. During the four or five years that our concern [31] wes in business it was its practice to pay its bills with furniture manufacturers by notes and renew those notes

(Testimony of O. A. Wadenstein.)

on occasion. That was a practice which had been employed with the Robert W. Irwin Company for a number of years prior to the consignment arrangement. (Tr. 255, 256.) Prior to the execution of the consignment agreement no suits or actions had been started against Renfro-Wadenstein Company. (Tr. 257.)

Up to and prior to the execution of the consignment agreements my company met its obligations with furniture manufacturers and its other creditors in the manner in which it had contracted to meet those obligations. (Tr. 265.) We were not able to carry as much of the better lines as we desired on regular terms simply because our capital would not justify it. We did not have the money. (Tr. 284.)

The invoice and statements for which we sent our notes with the request that the note be accepted in payment had no change in their printed form. The printed form says, I think, 2% 30, or 2% 10, either 2% 10 net 30, or 2% 30 net 60. (Tr. 284.)

We did not have a definite agreement as to the amount of time they would give us on separate invoices. Our arrangement was that they would work with us in carrying the account. It was more or less of a general and indefinite arrangement. We frequently found ourselves unable to pay these notes as they fell due and then we would ask them to grant an extension and allow us to renew the note. (Tr. 285.)

In 1927 we repeatedly discussed with the petitioner firms the desirability from our standpoint of carry-

(Testimony of O. A. Wadenstein.)

ing liberal credit and we tried to get that up as high as we could. We may have specified $15,000 and we proposed to carry that at a 7% interest rate. (Tr. 286.)

In the fall of 1927 I visited Robert W. Irwin and told [32] them something about our plans for this new store, and agreed to pay on their old account I think $2,000 per month. We paid part of it but we did not pay all of that. (Tr. 287, 324, 325, 326.) They wrote us and said if they were to ship this additional order which we had placed with Mr. Ferris for about $15,000 worth of merchandise, then they would like to have the old balance cleaned up but they did not insist upon us paying the old balance. (Tr. 288.)

With Ketcham & Rothschild there was final acceptance on their part of our proposal of standing credit of $15,000 at 7% interest; that was primarily credit to the amount of their merchandise that we expected to carry on our floors. As merchandise was sold out of that we would reorder so as to keep the amount about the same. If it exceeded that we were expected to remit on regular terms. (Tr. 289, 290.)

Prior to the consignment arrangment we received some merchandise from these concerns for which the invoices had the printed "Terms 2% 30 days, or net 60 days" x'd out and there was printed 'terms special," in each instance giving us additional dating. (Tr. 290, 291.)

In the Irwin case we had more merchandise on our

(Testimony of O. A. Wadenstein.)

floor than our indebtedness to Irwin, but in the Ketcham & Rothschild case we owed them an amount in excess of the furniture on our floor. In the Ketcham & Rothschild case we were turning back title to them to all the furniture on our floor. (Tr. 291.) When Mr. Rothschild was here he stayed about three days, went through our store and observed the stock that we were carrying. He went over our inventories or cards to get an approximation of what this furniture on hand amounted to. (Tr. 291, 292.) There was a very slight difference between his approximation and the final inventory. This difference was probably less than $1,000. (Tr. 292.) At the time Mr. Rothschild was out here we had substantial [33] debts owing to other manufacturers of high grade furniture and they were selling to us on open account. It was about October 5, 1928, that we turned our affairs over to Mr. Hills. A very substantial change had taken place in our affairs between March, 1928, and October of that year. We had lost quite a large amount of money. We had moved into a new buiding, had spent quite a little money for advertising and had dissipated the improvements that we had put in our old location. (Tr. 293.) At the time we turned our affairs over to Mr. Hills I cannot say how much money we owed because we had gotten a great many shipments in the new building, and the only way that I could tell would be to check back with the books. A great many of the creditors whom we owed were the same that we had owed when we moved into the new building, and there were some additional creditors. A

(Testimony of O. A. Wadenstein.)

great many of the creditors that we owed when we failed had claims against us that were owing in March 1928. (Tr. 294, 295.) I would guess that 20% of our indebtedness in October, 1928, was the remnant of the indebtedness that we owed in March of that year and had still been unable to pay in the interim. (Tr. 294, 295.) Quite a number of creditors in the interim between March and October, 1928, had enlarged their line of credit for our new store. (Tr. 295.)

During our business it was a common occurrence to get letters from factories in regard to our account and in regard to settlement of notes. We had not received them in any greater number or degree at about the time of March, 1928. (Tr. 299.)

In my letter of December 30, 1927, to Robert W. Irwin Company, I sent a post-dated check for $2,000, and apologized in the letter for having to do it, explaining the difficulties under which we were laboring for cash. (Tr. 315, 316, 325, 326, 288, 289.) In my letter of February 13, 1928, I was sending the Robert W. Irwin Company renewals to take up notes and promised them that [34] we would send them a check some time between then and the first of the month. In my letter of March 6, 1928, to Robert W. Irwin Company we said: "Enclosed please find copy of our last statement. Referring to the accounts receivable, this is our reserve in accounts and contracts which we assigned and which are now carried by the concern from which we are leasing our new building. We have no

(Testimony of O. A. Wadenstein.)

indebtedness at all with the bank." (Tr. 316, 317.)

There was always an exchange of letters in which we asked for more time and we explained it to them. They protested a little bit from time to time. If you would take the regular terms we were always back on our bills. As far back as May, 1927, we wrote them and asked them to accept our renewal notes and told them that we were hopeful that some time in the next few months if we could get our decks cleared we would be able to approximate the maturities of our obligations, but we never were able to accomplish that. (Tr. 324.)

About the first of March Irwin sent us a pretty drastic telegram. Shortly after our reply to that telegram Mr. Rothschild came out here in person from Grand Rapids. (Tr. 327.)

Practically all of the settlements that we made on furniture up to September 5, 1928, were by notes. (Tr. 327, 328.) On the date of September 5, 1928, Mr. Irwin wrote us: "We trust you will not ask us to accept further deferments of these payments in the form of notes because they are all items upon which we have given you extra time allowance." (Tr. 328.) That referred to notes we gave him in settlement of merchandise that had been sold, and these were items that we had sold back to Irwin under the bill of sale and then had sold and we requested them to accept our notes in settlement and which they of course did not want to do. (Tr. 328.)

At the time we made our assignment to Mr. Hills

(Testimony of O. A. Wadenstein.)

our affairs had reached a point where it became necessary to do that. [35] We had no cash to continue business and Mr. Hills was made assignee for the benefit of creditors. (Tr. 426.) At the time of our assignment to Mr. Hills we had a very small amount in the bank; there may have been an overdraft. (Tr. 427.)

There was no question at all that we were operating with too little capital, but it is my firm belief that if we had not moved into the new building we would not have failed. (Tr. 483.) There was not any time up to the time of the actual assignment to Mr. Hills that I did not think that if we closed our stock but what we could pay our bills; but as far as paying all of our bills in the course of our business I don't think there was a time in the history of our business we could have done that. There was not a time in the history of our business when we could pay all our bills and stay in business. (Tr. 485.) Prior to our making our assignment to Mr. Hills I had always been of the opinion that if permitted to do so we could probably pay our debts in full without any loss to creditors. (Tr. 485.) We had always thought that we would never let our business get to the point where we could not pay out 100 cents on the dollar. We were optimistic and enthusiastic about our business. There was a period of time when we thought we had a substantial equity in our business. After the first sixty days in the new building we did not get the expected increase in volume. That carried

(Testimony of O. A. Wadenstein.)

on through until our assignment. Each month it became more clear to me that it was going to be difficult for us to work out that business with the money we had in there. (Tr. 486, 487.) I think it was about September 1, 1928, that we first considered the necessity of making an assignment for the benefit of creditors. (Tr. 490.) On April 1, 1928, we *though* we had a business having an equity of $100,000. The period of five months up to September 1 so revolutionized our ideas that we meditated an assignment. The figures had jumped to [36] a point that we felt it was not safe to continue any longer without some revision of our plans without jeopardizing the interests of our creditors. (Tr. 491.)

As to our ability in March and April, 1928, to pay our bills in accordance with the terms extended us by the people to whom we owed money, will say if the terms were construed literally there might have been some difficulty, but under the elastic plan that I referred to we had had no difficulty with our concerns. As a matter of fact, we did not adhere to those terms, and the reason for that was that we did not have the means and we explained very generally with all the creditors of any amount, we expected them to carry us. It was only under that plan that we would buy. (Tr. 507, 508, 509.) At no time prior to the execution of the consignment agreements had any suit or action been started against the Renfro-Wadenstein Company. Our assignment for the benefit of creditors in October,

(Testimony of O. A. Wadenstein.)

1928, was made entirely at our own suggestion. (Tr. 509.)

After the execution of the consignment agreement subsequent shipments of merchandise by these two concerns were never carried on our books, they were treated as special invoices and placed in a folder which was marked "consignment." After the merchandise was sold it was billed to us and then put on the books as a direct obligation of our corporation. Our books indicate a charging off of the old indebtedness to the two petitioners after the consignment agreement. The approximate date of that charging off on our books was late in April, 1928. (Tr. 272, 273.) The difference between the amount of goods included in the bill of sale and the account which we owed to Robert W. Irwin Company was paid on May 22, 1928. That was the payment for the Phoenix line which we had agreed to keep. (Tr. 274.)

The shipments made by the Irwin Company after April 1, 1928, were made pursuant to the consignment arrangement and the same was the case with Ketcham & Rothschild. The bills of sale which [37] my concern prepared stated items and numbers and gave values or prices for them, which values were the invoice prices of the goods to our concern. We also paid Ketcham & Rothschild Corporation the difference between the goods contained in the bill of sale and the balance of the account which we owed them. We made this payment by two notes shortly after the consignment agreement was entered into. (Tr. 275, 276.)

(Testimony of O. A. Wadenstein.)

At the time of the consignment agreement the goods which had been previously shipped by the two petitioners were carried on our books as having been sold to my concern on open account. After, or at the time of the execution of the consignment agreement those goods were charged back to these respective factories and then carried in our consignment folder. (Tr. 276.)

When Mr. Rothschild was out here it was agreed that we would make reports twice a month reporting sale of consigned goods. Instructions were given to our bookkeeper, Miss Whaley, to report from our sales in accordance with that arrangement. That scheme was not carried out. Our bookkeeper was very much behind in her work and it was not carried out exactly as we agreed to. I think she was quite often behind in her reports. (Tr. 276, 277, 302.) Ultimately we reported the sales of consigned goods that we made by our concern up to a short period before the assignment to Mr. Hills for the benefit of creditors. The only reason that we did not report sales more promptly was because of the fact that Miss Whaley was behind in her work.

I think it was necessary for us to remit by notes for the goods which we reported sold. I can't say in how many instances; the records would have to show. (Tr. 277.) The goods which were shipped to us by these two concerns after the consignment agreement were invoiced "terms special." (Tr. 278.) Prior to the consignment arrangement we

(Testimony of O. A. Wadenstein.)

had received invoices for merchandise shipped by them marked "terms special." (Tr. 291.) [38]

All merchandise is marked by the factory by their own stencil and as a rule a plate. The furniture of these two concerns, as it stood on our floors, further had our price tag which carried the number and as a rule the factory's initials or coded as it would show their initials. It would have been possible to ascertain by the marks on the furniture what furniture belonged to Ketcham & Rothschild and which to Robert W. Irwin Company of our stock of goods. (Tr. 280.)

At the time of filing the petition in bankruptcy the furniture of these two concerns was capable of identification from the furniture of other manufacturing concerns on our floors by the marks I have just indicated. The furniture of these two concerns at the time of filing of the petition in bankruptcy was not segregated from the furniture of other concerns on our floors because it would make a better display intermingled with other lines. (Tr. 281.) We had never bought on consignment from either of these firms before; nor had we bought on consignment from any other furniture company prior to this. (Tr. 290.) We reported the sales that were made from time to time beginning in March, 1928, to these two claimants. They would send us a direct billing for merchandise reported as having been sold. That was invoiced to us on regular terms and we would settle that bill by cash or notes. (Tr. 301.)

(Testimony of O. A. Wadenstein.)

In assigning our accounts to the finance companies we generally had to reserve from 10% to 20%. Probably there would be some accounts that were not assigned at the end of the month. They were assigned at different periods. (Tr. 302.) Practically all of our accounts were assigned to the finance companies. There was no difference in the matter of assigning the accounts after the consignment agreement than there was before. (Tr. 305.)

As our sales were reported to the claimants they billed [39] us as I have testified, and on our side as we sold this merchandise we entered that merchandise on our books in the regular course of business as soon as our bookkeeper could get to it and it was added to our accounts receivable. These claimants were then entered on our books as our creditors to the invoice amount of our merchandise we had sold. (Tr. 306.) We made no distinction in the transactions I have discussed between the merchandise that was transferred back or attempted to be transferred back to the claimants and the merchandise that they subsequently shipped to us; we treated that all the same, in the matter of reporting sales and entering the merchandise on our books. Our arrangement with Mr. Rothschild when he was here was that all this furniture transferred or to be transferred back to them and to Irwin and merchandise subsequently shipped to us was to be reported on monthly. That arrangement went into effect when I signed the consignment contracts. (Tr. 307.)

(Testimony of O. A. Wadenstein.)

There was not any physical moving of the furniture in connection with the transferring of it back to either of the claimants. It was scattered throughout our store and remained scattered and intermingled with other furniture after the consignment agreement was signed by us in the same manner it had remained previously. It had no additional tag on it subsequent to the entering into of these consignment arrangements. These marks that I have described, or plates, were the designation of the manufacturer coupled with our price tag. (Tr. 307.) There was no different character or markings on these pieces of furniture than there was on any other furniture that we had on our floors. All furniture had our price tags and all had something to indicate the manufacturer. (Tr. 308.)

In our settlement with Ketcham & Rothschild there was a difference between the furniture that we were transferring back to them and the amount of our indebtedness. We divided that into [40] three notes, thirty, sixty and ninety days. We felt compelled to ask more time on those notes than had originally been arranged for. (Tr. 311, 312.) On our report of sales they would invoice us and we would send them a remittance sheet either settling by notes or by cash or by both. (Tr. 313.) When invoices were so sent to us we received a discount of 2% if we paid on the 20th of the following month. (Tr. 314.) We did not have any option given us separate and apart from the consignment agree-

(Testimony of O. A. Wadenstein.)

ment whereby we were given the right to return the merchandise at any time.

We fixed the retail price on this furniture, and we paid the freight. We did not segregate the proceeds of sales in any way. (Tr. 319.) We sold out of this furniture in the ordinary course in precisely the same manner that we had sold previously. We gave the customers to whom we sold the furniture at the same credit extensions, the same terms and the same prices that we had made before. There was no difference in the prices that we were required to pay Ketcham & Rothschild or Irwin. (Tr. 320.) Bills of lading were made out directly to Renfro-Wadenstein for all the furniture that was shipped subsequently. (Tr. 320, 321.)

The contract provides for carrying charges of 7%. That is simply an interest charge for the credit on carrying that amount of merchandise. That corresponds to the 7% interest charge that we had arranged to pay them for the line of credit that we had before. (Tr. 321.)

There was some furniture that belonged to us of the Irwin furniture that we did not turn back to Irwin in view of the fact that the amount of Irwin's furniture on hand exceeded the amount that we owed Irwin. We kept the Phoenix line that was referred to in the correspondence. That furniture invoiced approximately $1500. We did not include that in any reports that we made to Irwin. (Tr. 322.) I did not handle those reports personally [41] but I do not think there was any question about it. (Tr. 322, 323.)

(Testimony of O. A. Wadenstein.)

From the 30th of March, 1928, until Mr. Hills took charge under the assignment we continued our retail business precisely as we had conducted it before so far as our selling department was concerned. A great majority of our sales of furniture would include several articles of furniture to the same purchaser, and in some of these instances there would be a piece of Ketcham & Rothschild furniture and a piece of Irwin furniture. (Tr. 424, 425.) We would not distinguish between those in selling the furniture to a purchaser. There would be one invoice and the payments when they came in would be applied on that sale, and the proceeds of those payments would always be put into our bank account. In the case of one of our discount companies we remitted them twice a month for these collections. The collections that we made from sales during all of that period were put in the same bank account and there was no differentiation made by reason of the fact that a purchaser, for instance, had bought several pieces of furniture and included among them would be one or more pieces of Irwin or Ketcham & Rothschild furniture. (Tr. 425.) For instance, if I would sell you a $1,000 bill of furniture, and $200 of that would be Irwin or Ketcham & Rothschild furniture, and you would pay me $250 on account, I would just put that into my bank like any other collection. (Tr. 425, 426.) That money was intermingled and used in our settlements with our discount company and the people that had the assignments of our accounts, and our expenses of operation, etc. We did this all the

(Testimony of O. A. Wadenstein.)

time, from the time this consignment contract was made until the firm was closed. (Tr. 431, 432.)

Our affairs had reached a point where it was necessary to make the assignment to Mr. Hills at the time we did. We did not have any cash to continue the business and Mr. Hills was made assignee for the benefit of creditors. (Tr. 426.) Practically [42] simultaneously with the assignment to Mr. Hills the discount companies employed Mr. Hills to collect the accounts that had been assigned. (Tr. 426, 427.) We may have had an overdraft at the bank at the time of the assignment. (Tr. 427.)

For the furniture that we reported to Irwin and to Ketcham & Rothschild after March 30, 1928, as having been sold by us, we gave principally cash but we gave notes too. I think only in one instance have the notes been returned. The notes were not paid. I have not any way of telling whether they have been returned to me or the bankrupt. (Tr. 428.) As nearly as I can tell just one note was returned to the bankrupt. That was a note that was paid. (Tr. 429.) The unpaid notes which they accepted have never been returned and to the best of my knowledge they still have the notes of the bankrupt. (Tr. 429.)

We did not always pay twice a month to both of these firms the amounts we had sold and collected. We were not always able to do that and consequently we were generally behind. They frequently took that matter up with us. They did not investigate what disposition we were making of the con-

(Testimony of O. A. Wadenstein.)

tracts and open accounts. They knew in a general way how we handled our accounts. We advised them. (Tr. 433.)

Our agreements with these two firms provided, that is, where we gave notes to settle or to evidence the amount of furniture we had sold, that we would likewise give collateral in the assignment of accounts to secure these notes. That however was never done. I think there was one letter in which Mr. Rothschild suggested that that was the plan. I don't think Mr. Irwin ever referred to it. Mr. Rothschild was rather the man who took action in the matter of handling the assignments. (Tr. 434.) As to the note that we gave in settlement of the furniture sold after March 30, 1928, I presume that was treated just the same as all of our [43] notes payable. (Tr. 434.) Under our arrangement with Mr. Rothschild as soon as we sold a piece of furniture of the Rothschild or Irwin make I put that into our assets as soon as the bookkeeper could do it. When this was sold under our plan it was immediately carried, or to be carried, into the assets of our company, and Ketcham & Rothschild or Irwin would send us an invoice showing that that was due with 2% discount the 20th of the following month. (Tr. 435.) Our bills receivable and merchandise accounts were both augmented by the transaction as soon as we sold any of the Irwin or Ketcham & Rothschild manufactured furniture. (Tr. 435, 436.) As a result of such transaction we entered such furniture on our books as an indebtedness then owing Ketcham & Rothschild or to Irwin,

(Testimony of O. A. Wadenstein.)

and balanced that by showing an increase in our receivables. The furniture which was on our floor and described in the so-called bills of sale never left our possession. We always had it. It was on our floor and we simply kept it. It was never re-invoiced back to us in any manner. (Tr. 436, 437.) The only instrument evidencing the return of the furniture to us would be the consignment agreement. That was the only mode of putting the furniture back into our possession. (Tr. 437.)

From the time we had our agreement with Mr. Rothschild in Seattle we were proceeding under the consignment arrangement. That arrangement embraced all the furniture on our floor except the items already referred to in the Irwin case, and also embraced the furniture we expected them to ship in the future. Our possession of the furniture then on our floor thereafter was evidenced only by the terms of the consignment agreement. At the time of this consignment agreement we did not have any other similar arrangement with any other creditors. (Tr. 438.) Outside of the consignment contract we never had any correspondence with the claimants or either of them afterwards in the handling of the matter [44] in which they told us what prices we were to charge. (Tr. 441.)

We specially advised the discount companies with whom we were doing business that we had turned over furniture that was still on our floor to certain creditors but I do not think we advised the general creditors. (Tr. 443.) These two firms, or one of them, sent us literature from time to time ad-

(Testimony of O. A. Wadenstein.)

vertising their furniture. (Tr. 443, 444.) This was for distribution by our firm and it did not give notice or advertise in any way that this furniture did not belong to Renfro-Wadenstein. (Tr. 444.)

We specifically advised the Seattle Discount Corporation, General Discount Corporation and the Sunnyside Finance Company of these consignment arrangements. (Tr. 445.) As nearly as I can recall this was immediately after Mr. Rothschild was out here. (Tr. 446.) None of these finance houses ever made any collections on these customers' accounts. The collections were made by us. The finance houses did not bill the customers for the accounts receivable. (Tr. 446.) Prior to the assignment of our business the finance houses did not at any time notify the customers of the assignments of accounts. (Tr. 446, 447.) Prior to the time of the assignment to Mr. Hills we did not as a practice advise our customers that the customers' accounts had been assigned.

On stated periods as we settled we advised the three finance houses as to what collections were made. If we made a number of collections on some of these assigned accounts on a certain day we would not advise the finance houses that day or the following day nor at all until the next settlement date had arrived. (Tr. 447.) The assignments of the customers' accounts were never placed of record in any way by the assignee nor were they placed of record by us. We settled with the finance houses on an average of twice a month.

(Testimony of O. A. Wadenstein.)

The corporate books of my company and our invoices filed [45] also showed a transfer of the furniture of the furniture in our hands on April 1 back to Ketcham & Rothschild and Robert W. Irwin Company. (Tr. 448.) On our books the merchandise was simply charged back to balance the account so that we would not show that we were owing them. (Tr. 449.) The merchandise covered in the two bills of sale was placed in the consignment folder after the bills of sale were executed along with the furniture subsequently shipped under the consignment arrangement. (Tr. 449.)

As to our being entitled to any discount from either of these petitioners when we remitted by the 20th of the month following sales to our customers, that was covered by the contract. Two per cent is the customary discount. I don't know for sure if the contract provides 2%. If it does it was 2%; if it does not it was not. I advised Mr. Hills, the assignee for the benefit of creditors, of the existence of these consignment agreements. (Tr. 467, 468.)

We had our creditors meeting about noon. I walked back to the office with Mr. Hills and discussed with him the question of consignment accounts among other things. When I walked out of the office I turned him over to our bookkeeper and she had instructions to turn over everything. We did not specially pick them out but they were turned over with other documents. Mr. Hills was cognizant of the names of the consignors. That was on the date of the assignment. (Tr. 468.)

(Testimony of O. A. Wadenstein.)

Almost during the entire history of our business we were making these assignments of accounts to the discount companies and to others. (Tr. 491, 492.) Our business as conducted during the period from March 30, 1928, to the time of the assignment for the benefit of creditors was no departure in any respect in that regard from the mode of doing business that we had conducted at all times except that we were doing business with different finance companies. The percentage of accounts we had discounted remained about the [46] same. (Tr. 492.) Our *modus operandi* with these discount companies did not change in any particular subsequent to March 30, 1928. We still continued to discount all of our paper regardless of what furniture went into the making up of that paper. (Tr. 493.)

In my discussion with the officers of the discount companies concerning the consignment plan, there was never any thought of using these sales as collateral with the companies who were consigning the furniture. Our thought was not to change the method of handling our accounts at all. (Tr. 495.)

We always contemplated that under our arrangement and plan with Irwin and with Ketcham & Rothschild the moment that any of their furniture that they were shipping us or their furniture on the floor was sold, that we would put that in our own receivables and they would bill us direct. (Tr. 495.)

We did not advise the representatives of the discount companies that we had made any arrangements with Ketcham & Rothschild or with Irwin that would prevent our discounting paper in the

(Testimony of O. A. Wadenstein.)

future with those discount companies because we had not made any arrangements. We did not contemplate any arrangements that would prevent our discounting this paper with them, and we don't contend that we had any such arrangement. (Tr. 497.) Our conversations with Mr. Edris and the other representatives of the finance companies were not predicated upon any change that was necessitated in the discount of this paper by any arrangements that we had made with Irwin or Ketcham & Rothschild. We gave the discount companies the information about the consignment merely to keep them informed as to the progress of business. We felt that this was a point that was an advantage to us and naturally would be an advantage to them. Anything that we could do that would simplify the operation of our business and make it easier we knew would be interesting to them, and it was merely from that standpoint I gave them [47] this information. (Tr. 498, 499.) In talking with the representatives of the discount companies there was no discussion as to the method of handling this consignment arrangement. It was merely advice to them that we had made an arrangement whereby we would not have to carry this high-priced merchandise but it would be carried under the consignment plan. We never discussed the point whether it was to be carried only until the furniture was sold. I don't know whether the representatives of the finance companies asked us specifically what we were doing with the accounts after we sold the consignment merchandise. It was just a general prac-

(Testimony of O. A. Wadenstein.)

tice which they knew that we were discounting all our accounts. (Tr. 500.) We continued to discount these contracts and accounts with the finance companies after the bills of sale and the consignment agreements. When such contracts and accounts involved Irwin or Ketcham & Rothschild furniture we expected to pay for that merchandise after it was billed to us on regular account by the factories. (Tr. 501, 502.)

The testimony of Mr. Rothschild and Mr. Irwin that I had discussed the fact that we had been discounting our papers with finance companies is correct. I had discussed with Mr. Irwin and Mr. Rothschild prior to signing consignment agreements. (Tr. 502.)

The assignee for the benefit of creditors carried on the business of the corporation after his appointment for a period of about sixty days. (Tr. 510.) In our talks with the officers of three finance companies we advised them who the consignors were and I think the approximate amount of the consigned goods was mentioned. I could not be sure. (Tr. 510.)

Petitioner's Ex. 18A in the Robert W. Irwin matter is a financial statement of my company sent to Robert W. Irwin Company, dated January 1, 1928; that was prepared by our bookkeeper and is a correct reflection of the financial condition of our concern. [48] (Tr. 245.) That was prepared by our bookkeeper at my request from the books of our concern, turned back to me by the bookkeeper before it was sent to Robert W. Irwin and was examined

(Testimony of O. A. Wadenstein.)

by me when I enclosed it in that letter. I believed it to be a correct statement of the condition of our concern. (Tr. 246.) This represents the condition of our business at that time as far as I know. (Tr. 248.)

Petitioner's Ex. 54 for identification consists of balance sheets that are made up by Racine & Co. from our bookkeeper's trial balance and were generally taken off once a month. (Tr. 449, 450.) The trial balances, from which those documents were prepared, were prepared by our bookkeeper in the usual course of business. (Tr. 450.) I never checked these trial balances prepared by Racine & Co. with the books. My knowledge of the financial affairs were taken from the statements that were from time to time given to me. (Tr. 451.) Any statement that I would make with reference to the value of the corporation of Renfro-Wadenstein on April 1, 1928, would have to be with reference to the documents. (Tr. 454.) I would say that the value of the Renfro-Wadenstein Corporation as of April 1, 1928, was more than $100,000. (Tr. 454, 455.)

(The Trustee objected to the admission in evidence of Petitioner's Ex. 54 for identification upon the ground that the person who prepared them was not offered as a witness. The objection was by the Referee sustained. (Tr. 455, 456.) Thereafter during the examination of witness Morgan, Petitioner's Ex. 54 was received in evidence upon the condition stated by

(Testimony of O. A. Wadenstein.)

the Referee "that it will have to be supported by the trial balances and the authenticity of the trial balances from the books, otherwise it would not be considered.") (Tr. 463.) [49]

As to whether my opinion of the general condition of our business was predicated not so much upon the accountant's analysis of our books as my opinion of the business generally and its possibilities, I think they were both naturally very closely tied together; I don't know how you can very well separate them. (Tr. 488.) My estimate of the value of our business was very largely predicated upon what I felt were its earning possibilities, plus, I would say, the showing we had in our figures. (Tr. 489.) We had spent over $200,000 in the last ten years in advertising and we naturally felt we had created a very big item of goodwill which we valued at the definite figure of $5,000, although we considered it worth more than that. I think up to the time of moving into the new building that we felt with the value of our lease in that location and with our goodwill we probably had a value of $100,000 over the book figures. I doubt if we would have wanted to sell out for any less than that. (Tr. 489.) Our enthusiasm over the future and in view of the fact that we had been carrying on an advertising campaign would have prevented Mr. Renfro and myself, prior to moving into the new location, from selling out for any less than considerably more than the book value. (Tr. 490.) When our plans miscarried we had to revise our figures a bit. Conditions got so bad that we could

(Testimony of Herbert E. Smith.)

not avoid loss to our creditors and in five months they lost a very substantial amount of their claims against the firm. (Tr. 490.)

TESTIMONY OF HERBERT E. SMITH, FOR PETITIONERS.

I am a certified public accountant; at the request of attorneys for petitioners I examined the books of the bankrupt which were in the possession of Mr. Hoffman of S. T. Hills Audit Company and prepared a report from those books and from the papers given me by Mr. Emory, attorney for petitioners. (Tr. 330, 397.) [50] The result of my examination is shown in Petitioner's Ex. 50. From that Ex. 50 I also prepared Ex. 51 and Ex. 52, and I also prepared Ex. 53, which is a reconciliation of my report with that of Mr. Hoffman of S. T. Hills Audit Company.

(Note:

Ex. 50.

Ex. 50 shows the following with relation to

ROBERT W. IRWIN COMPANY

Total merchandise included in bill of sale from Renfro-Wadenstein to Robert W. Irwin Company	$14,490.45
Total invoice price of goods included in inventory submitted by Hills, Assignee (Ex. 48)	20,042.00
Total invoice price of goods to be accounted for	9,502.45

Total invoice price of goods not accounted for 742.25

Ex. 50 shows the following with relation to

KETCHAM & ROTHSCHILD, INC.

Total invoice price of merchandise included in bill of sale from Renfro-Wadenstein to Ketcham & Rothschild, Inc. 11,585.25
Total consigned goods and differences after bill of sale 4,498.75
Total invoice price of goods included in inventory submitted (Ex. 48) 9,848.75
Total invoice price of goods to be accounted for 6,425.75
Total invoice price of goods not accounted for 607.75

Ex. 51.

Ex. 51 shows a total amount of accounts receivable coming into the hands of Assignee S. T. Hills, representing consigned merchandise of

ROBERT W. IRWIN COMPANY

Total balances of accounts receivable 3,066.00
From this should be deducted the following: [51]
(forwarded) 3,066.00
Mrs. Geo. Casey account (being $1075. less $200) 875.00
P. J. Andrae (this item representing furniture sold by Assignee) 165.00

W. D. Harcus (this item representing goods sold by the Assignee) 301.00

Total deductions 1,341.00

Leaving the balance of receivables coming into the hands of the Assignee representing goods sold prior to the assignment ..... $ 1,725.00

Ex. 51 shows the accounts receivable coming into the hands of the Assignee representing consigned accounts of

KETCHAM & ROTHSCHILD, INC.

Total receivables 3,018.00

From this should be deducted the following:

Item 10 Harry Turney 490.00

Item 16 S. H. Forbes 315.00

P. J. Andrae (this item representing goods sold by Assignee) 192.00

Total deductions 997.00

Net balance of receivables coming into the hands of Assignee ..... $ 2,021.00

Ex. 50 shows that all of the accounts receivable set forth in Ex. 51 had been assigned by the bankrupt to discount companies.

Ex. 52.

Ex. 52 shows with relation to

ROBERT W. IRWIN COMPANY.

Furniture sold by trustee and amounts collected by him thereon 2,062.00

Payments received by Assignee on sales made prior to assignment for benefit of creditors:

Burr Fisher	137.37	
W. L. Harmon	56.40	
A. H. Hutchinson, #1290	20.00	
A. H. Hutchinson, #1359	45.00	
A. A. Murphy	66.90	
W. S. Harcus	100.00	425.67

[52]

Ex. 52 shows with relation to

KETCHAM & ROTHSCHILD, INC.

Furniture sold by Assignee and amounts collected by him on sale thereof 1,593.50

Payments received by assignee on sales prior to the assignment for benefit of creditors:

A. H. Hutchinson, #2368½	125.00	
Thos. Boyd	300.00	
Sadie O'Neill	100.00	
Gaspare Puccio	43.75	
		568.75

(These figures for the Hutchinson items both in Irwin and K.&R. are taken directly from Ex. 50 and do not exactly correspond with the total of the Hutchinson items shown in Ex. 52 at $208.)

(Testimony of Herbert E. Smith.)

Ex. 53.

Ex. 53 is Witness Smith's reconciliation of his audit, with relation to the Irwin merchandise, with that of Mr. Hoffman of S. T. Hills Audit Company. Among other things Ex. 53 shows the following seven items which are the seven disputed items referred to in the stipulation of counsel as to the amount of furniture on hand, to wit:

1 #1348 .....225.00
1 #1348½ 130.00

(These two items being admitted by Mr. Hoffman as having been omitted from his audit. (Tr. 615.)

1 #5000½ 184.00
1 #5024 .....615.00
1 #5202 .....125.00
1 #5204 .....135.00
1 #8978 .....415.00

It is claimed by Witness Smith that all of the said seven items should be added to Mr. Hoffman's figures of the inventory of furniture going into the hands of the Assignee.)

The corrected total of my inventory should be $19,984.50. (Tr. 380.) I included five items totaling $1,474. which Mr. Hoffman did not include. (Tr. 380.) As to each of these five items the difference arose in this way. In my inventory each one of the pieces included in a set is given its own number but in the inventory used by Mr. Hoffman only the first number would be given [53] for several of the pieces. In that way he omitted these five items. (Tr. 380, 391.) I did not familiarize myself

(Testimony of Herbert E. Smith.)

with the factory practice of giving these different articles of furniture specific numbers. (Tr. 404.)

(Note: Witness' testimony on these five items stricken by the Referee (Tr. 384, 388) but the testimony preserved in the record for review.) (Tr. 389.)

There was no way to ascertain from the books what particular piece of furniture payment was made on. Where there were other items in the account cash would be credited without specifying whether it was for this merchandise or for some other. (Tr. 423.)

STIPULATION AS TO AMOUNT OF SO-CALLED CONSIGNMENT FURNITURE.

Reserving to the trustee the right to attack at all times the validity of the instruments, and reserving to the Petitioners the right to introduce evidence concerning seven disputed items of furniture claimed by accountant Smith to have been omitted from the report of accountant Hoffman, it was stipulated in open court between the parties substantially as follows:

KETCHAM & ROTHSCHILD, INC.

Shipments subsequent to consignment agreement	$ 7,047.06
Of said shipments there was furniture on hand at the time Assignee Hills took possession amounting to	4,232.56
Furniture included in the bill of sale and on hand when Assignee Hills took possession	5,751.75

Total furniture on hand when Assignee Hills took possession	9,984.31

IRWIN & COMPANY.

Shipments subsequent to consignment agreement	$15,054.00
Of said shipments there was furniture on hand at the time Assignee Hills took possession amounting to	9,993.50
Of said furniture shipped subsequent to consignment agreement, there had been sold, prior to the assignment to Hills, furniture amounting to	5,060.50

[54]

Of the furniture described in the bill of sale, there was on hand, at the time Assignee Hills took possession	$ 8,391.00
Of the furniture described in the bill of sale, there had been sold, prior to the assignment to Hills	7,099.45

(Tr. 347, 349.)

TESTIMONY OF TRUMAN B. MORGAN, FOR PETITIONERS.

TRUMAN B. MORGAN, witness on behalf of petitioners:

I am a certified public accountant residing in Seattle and employed the principal part of the time with Racine & Co., a firm of public accountants in Seattle which did some accountancy work for Renfro-Wadenstein Corporation during the year 1928 and 1927. (Tr. 459, 460.)

(Testimony of Truman B. Morgan.)

Petitioners' Ex. 54, comprising approximate balance sheets of April 30, 1928, January 1, 1927, November 30, 1927, and December 31, 1927, were prepared by an assistant under my supervision from trial balances made by Renfro-Wadenstein's bookkeeper to Racine & Co. and to myself. (Tr. 460.)

(The Referee permitted these balance sheets to be admitted "with that understanding, that it will have to be supported by the trial balances and the authenticity of the trial balances from the books, otherwise it would not be considered.")

(Note on Ex. 54:

Ex. 54 shows total net worth in the following amounts on the following respective dates:

January 1, 1927	$102,742.97
November 30, 1927	110,710.18
December 31, 1927	100,741.10
April 30, 1928	48,679.91)

In my trial balance for the month of May, 1928, I noticed a shrinkage. (Tr. 464, 465.) [55]

TESTIMONY OF A. WILLIAM HOFFMAN, FOR TRUSTEE.

I am a public auditor and accountant auditing under the style "S. T. Hills Audit Company" and have been familiar with the books of Renfro-Wadenstein and of Mr. Hills as bearing upon the affairs of that company from October 9, 1928, to the present time. (Tr. 589.) I prepared Exhibits "K," "L," "M" and "N."

(Testimony of A. William Hoffman.)

(Note: Exhibit "M" refers to Ketcham & Rothschild and shows the following:

Total of goods sold by Hills as assignee ...1,593.50

Total of goods sold prior to the assignment. (Tr. 594.) 5,854.75

Exhibit "N" relates to Robert W. Irwin Company and shows the following:

Goods sold by Hills as assignee 3,571.00

(This total includes $1,510. sold to Olive Bosworth, which said item is not included in Petitioner's Ex. 52 prepared by Mr. Smith.) (Tr. 595.)

Goods sold prior to assignment .....5,727.45)

The only substantial dispute between the reports which I have submitted and the reports which Smith-Robertson submitted concern the five disputed items of the inventory, to-wit: #5000½, #5024, #5202, #5204, #8978. (Tr. 615.) None of these five items is included in the assignee's inventory. (Ex. 48, Tr. 617.) It is true that I have included in my audit some other pieces as being on hand which are not included in the inventory Ex. 48. (Tr. 622.)

TESTIMONY OF S. T. HILLS, FOR PETITIONERS.

S. T. HILLS, witness on behalf of petitioners, testified:

I am a resident of Seattle engaged in the business of business adjustments and financing business. On October 3, 1928, I was appointed and accepted the

(Testimony of S. T. Hills.)

position as assignee for the benefit of creditors of Renfro-Wadenstein Corporation and at that time took over such assets of the corporation as I could find in the [56] place. I relinquished my position on the appointment of a receiver in the Federal Court. (Tr. 513.) At the request of petitioner's counsel in October, 1928, I prepared Ex. 48, which is an inventory of goods of Ketcham & Rothschild and Robert W. Irwin which were on the floors of Renfro-Wadenstein. (Tr. 515.)

As assignee I made sales and made collections. (Tr. 516.) I think my sum total would possibly be a little less than shown by the Petitioner's Ex. 52. The P. J. Andrae item of $165 on Ex. 52 was subsequently paid on December 17. As to the Bosworth item (see Trustee's Ex. "M") we did not collect any money for that excepting a little balance of 87¢. None of these was sold by me. We were holding them in trust, you might say, awaiting their orders to deliver. (Tr. 521.) We sold item 2428–L to P. J. Andrae for $192 on October 10, 1928, and received the money on December 12, 1928. (Tr. 521, 522.) I have a detailed record of all my cash transactions from October 3. This record is divided in this manner:—Cash receipts, accounts receivable, distribution, Renfro-Wadenstein unpledged, Seattle Discount Corporation, General Discount Corporation, contingent (that meaning those accounts that have been assigned to two or more finance companies). (Tr. 524, 525.)

Some collections made by me were deposited in the funds of Grass representing those accounts

(Testimony of S. T. Hills.)

which were sold to Grass by the Trustee. (Tr. 527.) I turned over to Mr. McLean, the receiver, $2,935.88 in cash. The report of Mr. McLean as receiver shows that he turned over to the Trustee $5,321.22 in cash; that comprised the amount that I turned over to him together with additional collections which I made as his employee from the time of his appointment, November 16, to the time of the election of the trustee. None of these additional collections involve furniture here in dispute. (Tr. 529.) I was making some collections not in my capacity as assignee for the benefit of creditors of Renfro-Wadenstein Corporation [57] but as an agent for these finance houses to whom accounts receivable had been assigned. (Tr. 553.) When we collected anything for the discount companies we kept it distinctly separate and apart until the appointment of the receiver, in fact, during our administration pending any litigation or claim to the contrary. (Tr. 553, 554.) We deposited it in a bank prior to the time I turned it over to the receiver. I will qualify that by saying that there was some of it paid at my office, 801–4th Avenue, in fact, quite a large sum of it of the Seattle Discount Corporation. I deposited separately under separate signatures the collections which we made while I was physically in the bankrupt's office. I had a bank account styled "S. T. Hills, Assignee for the benefit of creditors for Renfro-Wadenstein." All the collections which I have mentioned were deposited in that account except the Burr Fisher collection which was placed in a trust account. (Tr. 554, 555.)

(Testimony of S. T. Hills.)

None of the items on Ex. 2 was collected by me as agent of the discount corporations other than the Burr Fisher. (Tr. 555.) After the time I took over the affairs of the bankrupt I made no assignments of the accounts receivable for furniture which was subsequently sold, to the finance corporations. (Tr. 555.) The second sheet of Ex. 52 shows five items representing furniture sold prior to the assignment for the benefit of creditors, and for which I made collections. The collections, I rather think, were made in both capacities, that is, by me as assignee and as agent for the discount corporations. Each of these items had been assigned to a discount corporation. (Tr. 556, Ex. 52.)

Petitioner's Ex. 51 contains a correct statement of the balance of accounts receivable at the time of my going in as assignee. (Tr. 559.) Upon my taking over my duties as assignee I was not advised of the consignment agreements by Mr. Wadenstein; I discovered that myself. One of the salesmen told me that he [58] thought the Ketcham & Rothschild goods were on consignment. I immediately referred to the ledger of Ketcham & Rothschild and found the open acount on the books with no record on the ledger sheet. I dismissed it from my mind as a consignment. It was not until Mr. Emory, attorney for petitioner, called upon me in person and asked that the goods be delivered to his client that I began to search the letter files and found no record of a consignment. However, upon Mr. Emory's assurance that there was a consignment I went through the files and finally dug up a letter and copy

(Testimony of S. T. Hills.)

of a purported consignment of the account. (Tr. 560, 561.) After Mr. Emory requested me to make an inventory of the goods that the petitioners claim, I had them tagged and specially marked with a tag "Hold—do not sell"; they were not segregated until about the time of the appointment of a receiver, and fearing there might be some misunderstanding we moved them on to the fourth floor, and the goods were so held and tagged up to the time of the filing of the petition in bankruptcy. (Tr. 561.)

While I was assignee there was no segregation of the collections at any time except the segregation that I have testified to and except the segregation on the finance company assigned discount accounts. The other proceeds of sales and collections were intermingled in one fund and were drawn on for the expenses of administration, salaries, wages, and the like. (Tr. 563.)

My appointment as assignee for the benefit of creditors was the result of a series of meetings among committees of creditors going over a period of about one month prior to my appointment. (Tr. 563, 564.) Mr. Wadenstein or Mr. Renfro participated in those meetings and the corporate condition was discussed very thoroughly. At the time I took charge as assignee there was a very substantial overdraft but there may have been some cash on hand because all checks were stopped in payment. (Tr. 564.) The [59] amount of cash was $308.68. The overdraft ran between $5,000 and $6,000. (Tr. 565.) The only two accounts on

(Testimony of S. T. Hills.)

Petitioner's Ex. 51 which were sold by me as assignee are No. 9, W. D. Harcus, and also the P. J. Andrae item, at the bottom of the page. (Tr. 566.) Ex. "M" and Ex. "N" were prepared under my instructions from the records and ledgers of Renfro-Wadenstein and from records of S. T. Hills as assignee. The tabulations in Ex. "M" and Ex. "N" are correct. (Tr. 568, 572, 573, 577.) Exs. "M" and "N" disclose all the accounts and contracts that are here in question that have been assigned to discount companies and others (Tr. 570) and a statement of the goods sold by me while I was assignee. (Tr. 577.) As to whether all of the payments shown on Mr. Smith's audit as paid to the trustee or assignee were paid to me in that capacity or whether some of them were paid to me and received by me as agent for the discount companies I would be unable to segregate the exact amounts. (Tr. 570.) Immediately after the assignment and true condition of Renfro-Wadenstein was learned the Seattle Discount Corporation employed my office at 801–4th Avenue to send out notices to all accounts which they had purchased including all installment and open accounts, that their account was owned by the Seattle Discount Corporation and that future payments were to be made at 801–4th Avenue. If people came to the store of Renfro-Wadenstein and as a matter of convenience wished to pay their account there we took the money, or the clerks did—the assignee did at the place of business of Renfro-Wadenstein Company, and then

(Testimony of S. T. Hills.)

it was accounted for through our office at 801–4th Avenue. (Tr. 570, 571.) I did not check the records personally to ascertain just what goods of both firms had been sold prior to the assignment but relied on Mr. Hoffman. (Tr. 578.)

After I went in as assignee I made certain collections as assignee for the benefit of creditors and certain collections [60] as agent for these finance companies (Tr. 585), and these collections were endorsed on the corporate books without any distinction as to the capacity in which I made those collections. (Tr. 585, 586.) I was really acting in a dual capacity as assignee for the benefit of creditors and as agent for these discount corporations. (Tr. 586.) The Turney account was assigned to Atiyeh Brothers in Portland for an indebtedness that the bankrupt corporation owed it at the time of the assignment; this assignment was made before I went in as assignee. (Tr. 587, 588.)

TESTIMONY OF WILLIAM EDRIS, FOR TRUSTEE.

WILLIAM EDRIS, witness on behalf of Trustee: I am president of Seattle Discount Corporation. For some two or three months previous to their moving into their building at 5th and Pike, and thereafter, my company financed their accounts. In discounting their paper which included both contracts and open accounts, we would advance 90% to the bankrupt. (Tr. 531.) Those accounts and

(Testimony of William Edris.)

contracts would disclose the name of the purchaser and the various articles of furniture and the purchase price and probably the date when they were sold. (Tr. 531, 532.) The contracts which were assigned to us did not disclose the name of the manufacturer of the furniture. As to the open accounts assigned to us, I was handed an invoice such as is usually sent out by stores and on the left-hand side of the invoice there was a column in which was designated various letters and numbers designating the stock number, but it was of no information to me nor did I know what it signified. (Tr. 532.) An entire account would be assigned to us and there would be no segregation of different pieces of furniture out of the account assigned. (Tr. 533.) Mr. Wadenstein did not at any time prior to the assignment for the benefit of creditors advise us of any consignment arrangement with [61] either Ketcham & Rothschild or Irwin. (Tr. 533, 534.) We continued to discount the bankrupt's accounts and contracts down to within three days of the assignment to Mr. Hills. Prior to the assignment to Mr. Hills I did not receive any knowledge or information from any source that any merchandise on the bankrupt's floor was claimed to be consigned merchandise. (Tr. 534.) I thought I was familiar with the bankrupt's business affairs but I was mistaken. (Tr. 534.) Either prior to leasing them the space in the new building or loaning them money on their assignments I talked very extensively with Mr. Wadenstein and Mr. Renfro

(Testimony of William Edris.)

(Tr. 534, 535) respecting statements that Mr. Wadenstein had purporting to be balance sheets. I did not go over the books. (Tr. 535.) I had no idea that any of these accounts which my concern was discounting covered merchandise which had previously been consigned by manufacturers to the bankrupt corporation. (Tr. 535.) I permitted the bankrupt to make collection on these accounts receivable with limitations. My discount corporation did not at any time from the moving of the bankrupt to their store up to the time that Mr. Hills went in as assignee make any collections on any accounts receivable or any contracts which were assigned to my corporation by the bankrupt, but the bankrupt would make the collections as my agent specifically and definitely appointed for that purpose. No notification of the assignment was given to the customer whose accounts or contracts were assigned. (Tr. 538.) With several exceptions which we found after we got into the books, the proceeds of the collections were placed in the general funds of the bankrupt corporation and our concern was remitted to at stated intervals by Renfro-Wadenstein. (Tr. 539, 540.) Under our arrangement with the bankrupt they were to remit to us twice a month for the sums advanced in discounting the accounts receivable. They made that remittance with their own check. (Tr. 540.) I don't remember the exact date [62] that we appointed the bankrupt corporation as our agent to collect these receivables. (Tr. 540, 541.)

TESTIMONY OF C. H. BAILEY, FOR TRUSTEE.

C. H. BAILEY, witness on behalf of Trustee: In 1928 I was secretary of General Discount Corporation; my firm began to discount the accounts and contracts of Renfro-Wadenstein over six months, possibly longer, before Renfro-Wadenstein moved into their last store on 5th and Pike. (Tr. 542.) We continued to discount their contracts and accounts until up to the last. In the accounts that were assigned to us under that arrangement there was no segregation of furniture out of an account. We would take an assignment of an entire bill. (Tr. 543.) We were not advised of anything concerning the consignment arrangements of the bankrupt with Irwin Company and Ketcham & Rothschild. (Tr. 543.) It is not a fact that Mr. Wadenstein called at our office and explained it to me. (Tr. 544.) It was some time after the failure that I first learned that it was claimed that the Irwin and Ketcham & Rothschild furniture was consigned furniture and not sold by the factories outright to the bankrupt. Nobody of the General Discount Corporation knew of these financial agreements prior to the time I have just stated. I had personal charge of these assignments and handled them solely. On the assigned accounts receivable which we would take there was not to my knowledge any designation of the names of the manufacturer of a particular article. In some cases I think that a

(Testimony of C. H. Bailey.)

number would be placed opposite the particular article. We would have no way of telling where the article came from. It would simply state what it was. (Tr. 544, 545.) I do not think my concern took any assigned accounts after Mr. Hills went in as assignee for the benefit of creditors. (Tr. 545.) [63]

(Here it was stipulated between counsel that a bill of sale in conformity with and substantially following the wording of the order of court, was executed by the trustee in bankruptcy transferring assets to Robert Grass.) (Tr. 546.)

The General Discount Company did not advance the money to Mr. Grass to purchase the assets from the trustee. (Tr. 547.) The money for the purchase was advanced through A. E. Pierce. Mr. Pierce is president of our company. I could not say whether Mr. Edris contributed some of the money. (Tr. 548.) Nor could I say whether the Seattle Discount Corporation advanced some of the money used for the purchase of the assets from the Trustee. I do not know. (Tr. 549.) I do not think Robert Grass advanced the money. (Tr. 549.) The bankrupt remitted to my concern whenever the account was due. (Tr. 549.) That was practically every day. It might be only once a week. No notice of the assignment was given by my concern to the customer whose account or contract was assigned. (Tr. 550.) A. E. Pierce has numerous activities. He is secretary of the Home Savings & Loan Association and is interested in

(Testimony of C. H. Bailey.)

other firms or loan associations including Washington Loan & Securities Co. and Graham & Pierce. (Tr. 550.) The General Discount Corporation did not conduct a sale of the assets which were purchased from the trustee in bankruptcy. I could not say whether it did through its agent. (Tr. 551.) The General Discount Corporation did not receive in whole or in part the proceeds of the sale of the furniture which was a part of the assets purchased from the trustee in bankruptcy. (Tr. 551.) It did receive from those proceeds just the proceeds from the accounts that we had purchased previously from Renfro-Wadenstein. (Tr. 551, 552.)

(End of Summary of Evidence.) [64]

From the records, files, and testimony, I find the facts to be as follows:

FINDINGS OF FACT.

1.

For about five years prior to March, 1928, petitioner, Robert W. Irwin Company, engaged in the manufacture of furniture at Grand Rapids, Michigan, had been selling furniture on open account to the bankrupt, Renfro-Wadenstein, engaged in the retail furniture business at Seattle.

2.

In November, 1927, the bankrupt owed Irwin Company approximately $20,000.00, of which approximately $8,000.00 was for goods shipped during 1927 and the balance was for goods shipped prior to 1927.

3.

As a result of Irwin Company's efforts to get the account in better shape, Mr. Wadenstein, president of the bankrupt corporation, went to Grand Rapids in November, 1927, and there arranged with Irwin Company to liquidate the account by paying $2,000.00 per month beginning in November, 1927.

4.

After this arrangement the bankrupt made only two payments—one of $2,000.00 in November and one in December, 1927; and made no further payments on any account to Irwin Company until some time in April after the bankrupt had signed the so-called consignment agreement hereinafter mentioned.

5.

In March, 1928, Irwin Company received through its traveling salesman, Mr. Ferris, an order from the bankrupt for over $15,000.00 of goods, but refused to make any shipment until further payments should be made on the existing indebtedness. [65]

6.

Mr. Rothschild, president of petitioner Ketcham & Rothschild, then a merchandise creditor of the bankrupt, conferred with Irwin in New York and Grand Rapids concerning the bankrupt's business situation and its accounts with the two petitioners. Mr. Rothschild, after the conference in Grand Rapids, proceeded on to Seattle to look into the situation and take some action on behalf of his

own company and on behalf of the Irwin Company subject to the latter's approval. He arrived in Seattle in March, 1928, and remained about three days.

7.

The bankrupt, as a result of its officers' conferences with Mr. Rothschild at this time, signed the following two written instruments: (a) A so-called consignment agreement (Irwin's Ex. 27) which now bears date April 1, 1928, providing that Robert W. Irwin Company at its option should furnish goods to the bankrupt on the terms and conditions therein set forth, and (b) a letter (Irwin's Ex. 26) addressed to Robert W. Irwin Co., dated March 23, 1928, referring to said so-called consignment agreement, and particularly to paragraph nine thereof.

8.

Paragraph nine of the so-called consignment agreement stated and provided that the bankrupt had in its possession certain goods "as per attached list" which had theretofore been sold and delivered to the bankrupt by the Irwin Company on credit and had not been paid for, that the title to said goods "is hereby transferred and conveyed back" to Irwin Company, and should thereafter be treated as having been delivered to the bankrupt "on consignment and under and subject to all the terms and conditions of this contract"; and that in consideration of said transfer and conveyance of the title of said goods back to Irwin Company, "that

[66] company (Irwin) does hereby cancel'' the indebtedness of the bankrupt for said goods.

The letter of March 23rd referred to said paragraph nine of the so-called consignment contract and provided, in substance, that the bankrupt would furnish, shortly after the first of the month, an inventory of Irwin Company's merchandise on hand, and would also furnish a "bill of sale which will act as a transfer back to your Company (Irwin) of this merchandise'' and that any difference in the amount of the account would be taken care of in three equal payments, thirty, sixty and ninety days.

9.

The letter of March 23, 1928, together with two copies of the so-called consignment agreement, were sent to Irwin Company, who received them about March 27th or 28th. When Mr. Irwin received these copies of the contract the date was blank. He wrote in the date April 1, 1928, and executed the contract immediately on behalf of his company but retained both copies of the contract in his possession until September 5, 1928, when he sent one of them back to the bankrupt.

10.

The bankrupt executed and sent to Irwin a bill of sale (Irwin's Ex. 28) dated August 6, 1928, transferring the items of furniture therein named to Irwin Company. On September 5th Irwin Company accepted this bill of sale and sent to the bankrupt one of the executed copies of the so-called consignment agreement. Up to that time Irwin

had been having correspondence with the bankrupt and had held both copies of the so-called consignment agreement on his desk pending the getting of a correct list of goods that Irwin Company was to take back title to under paragraph nine of the agreement. [67]

11.

The bill of sale dated August 6th was never filed for record.

12.

After the execution of the so-called consignment agreements and bills of sale the petitioners respectively credited the bankrupt's account with the value of goods set forth in the respective bills of sale.

13.

Irwin Company on August 20, 1928, which was prior to accepting the bill of sale, made its last shipment of goods to the bankrupt.

14.

At the time bankrupt signed the so-called consignment agreement and at all times thereafter all the furniture of Irwin Company and of Ketcham & Rothschild make in the possession of the bankrupt was intermingled with other furniture. There was no physical change of possession of this furniture from bankrupt to either of the petitioners, and no segregation of any kind.

15.

The bankrupt was unable and failed to pay its obligations in due course of business and was in-

solvent at all times from prior to November 1927 until it made the assignment for the benefit of creditors. These facts were known to both petitioners during all said period.

16.

All shipments of furniture made by each petitioner to the bankrupt after March 30, 1928, were made directly on bills of lading to the bankrupt in the same manner that shipments had been made prior to the execution of the so-called consignment agreements. [68]

17.

The invoices of each petitioner for goods shipped to the bankrupt after March 30, 1928, were marked "terms special." The same phrase had been used on some invoices of goods shipped by each petitioner prior to March 30, 1928.

18.

The furniture held and received by the bankrupt under the so-called consignment agreements was not segregated at any time but was intermingled with the bankrupt's furniture on display. The so-called consignment furniture bore tags or marks indicating by what factory it was made, but bore no mark indicating that it was consigned furniture or that it was not the property of the bankrupt.

19.

The bankrupt kept in a separate folder, designated a consignment folder, the invoices for furniture held by or shipped to the bankrupt under the so-called consignment agreements with each of the petitioners. There was nothing in the bankrupt's

books of account to show that it held any goods under consignment.

20.

Each petitioner carried a consignment account with the bankrupt on its books.

21.

The petitioners, respectively, carried so-called consignment accounts with bankrupt, and upon receiving a report from the bankrupt of a sale by it of any items of consigned furniture, would make a direct charge against the bankrupt therefor.

22.

The bankrupt did not make to either petitioner the periodical reports as required by the so-called consignment agreements. [69]

On August 4, 1928, the bankrupt wrote to Irwin Company enclosing a report of sales with two notes in payment of the goods sold. This was the only report, and the only payment or attempt to make payment of any kind, made by the bankrupt to Irwin Company under the so-called consignment agreement. The said notes had not been paid and were still held by Irwin Company after the adjudication in bankruptcy herein.

23.

A bill of goods sold by the bankrupt to a single customer would include so-called consigned goods of both petitioners together with other furniture. The contract or account receivable representing such sale to the bankrupt's customer would not segregate the so-called consigned furniture of either

of the petitioners from that of the other petitioner or from any other furniture.

24.

The bankrupt would deposit in its bank account the proceeds of sales of so-called consigned furniture and other furniture and would draw on said bank account for its operating expenses and other needs. There was no segregation of the moneys received on account of the so-called consigned furniture.

25.

On the occasion of opening its new place of business the bankrupt published in the newspaper certain advertising which contained announcements of the opening, and of its having for sale furniture of the manufacture of both of the petitioners. This advertising was published with the financial assistance of both petitioners and with their knowledge of its text. Said advertising contained no statement that the furniture of petitioners' manufacture in which the bankrupt was dealing was held on consignment.

26.

Beginning some time prior to March 30, 1928, and continuing [70] until the assignment for the benefit of creditors, the bankrupt made a practice of discounting and assigning its contracts and accounts receivable to discount companies or finance companies; that practice was known to both petitioners both before and after the bankrupt signed the so-called consignment agreements.

27.

The discount companies at the time of the assignments of bankrupt's contracts and receivables to them, had no knowledge that said contracts and accounts represented any goods received or claimed to have been received, by the bankrupt on consignment.

28.

On October 3, 1928, Renfro-Wadenstein made an assignment to S. T. Hills for the benefit of its creditors.

29.

While assignee Mr. Hills sold some of the furniture, and acting in the dual capacity as assignee and as the agent of the discount companies collected the bankrupt's contracts and accounts receivable. The proceeds of the collections on the contracts and accounts which had been assigned to the discount companies were kept separate and apart. There was, with a minor exception, no other segregation of proceeds of collections.

30.

After the assignment to Hills both petitioners made demand on him through their attorney for the return of the furniture claimed by them to have been consigned.

31.

The petition in bankruptcy was filed October 19, 1928; the order of adjudication was entered November 9, 1928; J. L. McLean was appointed receiver November 15, 1928; and W. S. Osborn was elected and qualified as trustee November 21, 1928. [71]

32.

(a) The amount of furniture included in the bankrupt's bill of sale to Irwin Co. was $14,490.45

The amount of furniture shipped by Irwin Co. to bankrupt subsequent to Apr. 1, 1928..... 15,409.00

Total of Irwin so-called consigned furniture $29,899.45

(b) The amount of Irwin so-called consignment furniture delivered to the Trustee in Bankruptcy was..$18,739.50

This included furniture described in the bankrupt's bill of sale to Irwin Co. amounting to .....$ 8,391.00

And furniture shipped by Irwin to bankrupt subsequent to April 1, 1928 amounting to.....10,348.50

$18,739.50

(c) The Trustee in Bankruptcy received contracts and accounts receivable representing Irwin so-called consignment goods (including both goods described in the bill of sale and goods shipped subsequent to the so-called consignment agree-

ment) theretofore sold to the bankrupt amounting to .....$ 1,725.00
The said receivables mentioned in this subdivision (c) were not collected prior to the bankruptcy. (See Petitioner's Ex. 51.)

33.

Hills as assignee.

(a) Received payments on Irwin so-called consignment furniture (including furniture described in the bill of sale and that shipped subsequent to the purported consignment agreement) sold by the bankrupt prior to the assignment for the benefit of creditors in the sum of .....$ 425.67

(b) And sold certain Irwin so-called consignment furniture (including furniture described in the bill of sale and furniture shipped subsequent to the purported consignment agreement) for which there was collected by the assignor, receiver and trustee, the sum of .....$ 2,062.00

34.

(a) The amount of furniture included in the bankrupt's bill of sale to Ketcham & Rothschild was $11,585.25

(b) The amount of furniture shipped by Ketcham & Rothschild to bank-

rupt subsequent to March 30, 1928 was .....$ 7,047.06

Total of Ketcham & Rothschild so-called consigned furniture $18,632.31

[72]

(b) The amount of Ketcham & Rothschild so-called consignment furniture delivered to the Trustee in Bankruptcy was .....$ 9,984.31

This included furniture described in the bankrupt's bill of sale to Ketcham & Rothschild amounting to.....$5,751.75

And furniture shipped by Ketcham & Rothschild to bankrupt subsequent to March 30, 1928, amounting to 4,232.56

$ 9,984.31

(c) The Trustee in Bankruptcy received contracts and accounts receivable representing Ketcham & Rothschild so-called consignment goods (including both goods described in the bill of sale and goods shipped subsequent to the purported consignment agreement)

theretofore sold by the bankrupt amounting to .....$ 2,021.00

These contracts and accounts receivable mentioned in this subdivision (c) were not collected prior to the bankruptcy.

35.

Hills as assignee.

(a) Received payments on Ketcham & Rothschild so-called consignment furniture (including furniture described in the bill of sale and furniture shipped subsequent to the purported consignment agreement) sold by the bankrupt prior to the assignment for the benefit of creditors, in the sum of .....$ 568.75

(b) Sold certain Ketcham & Rothschild furniture which was included in the bill of sale to Ketcham & Rothschild for which there was collected by the assignee, receiver and trustee, the sum of .....$ 1,593.50

36.

Hills as assignee turned over to McLean as receiver cash in the sum of .....$ 2,935.88

37.

The trustee in bankruptcy, under order of court sold practically all the furniture and receivables

in his hands to Robert Grass, trustee (for principals unnamed) for $150,000 cash.

38.

It was stipulated December 5, 1928, between the petitioners and trustee herein that (a) the sum of $21,783.55 out of the purchase price paid by Robert Grass shall stand in lieu of [73] the merchandise claimed by petitioners and shall be impressed with every right which they had at the date of bankruptcy and at the date of the stipulation; (b) and that the sum of $9,874.05 out of the purchase price paid by Robert Grass shall stand in lieu of the unpaid accounts receivable and proceeds of other accounts receivable claimed to have been collected by S. T. Hills as assignee, in lieu of the accounts receivable and collections on other accounts receivable claimed by petitioners and shall be impressed with every right which petitioners had at the date of bankruptcy and at the date of the stipulation.

39.

The bankrupt did not at any time subsequent to March 30, 1928, assign its receivables to either of the petitioners as collateral for any notes given to petitioners for so-called consignment goods.

I further find the following facts with relation to

KETCHAM & ROTHSCHILD, INC.

40.

For several years prior to March, 1928, petitioner,

Ketcham & Rothschild, Inc., engaged in the manufacture of furniture at Chicago, Illinois, had been selling furniture on open account to the bankrupt Renfro-Wadenstein.

41.

In the year 1927 and until Mr. Rothschild's visit to Seattle in March, 1928, the bankrupt had an arrangement with Ketcham & Rothschild for a so-called "frozen credit," whereby Ketcham & Rothschild granted to bankrupt a standing credit of whatever sum the bankrupt might have invested in samples of Ketcham & Rothschild goods, up to $15,000.00, the bankrupt to pay interest at the rate of 7% per annum for the use of said credit. Any merchandise the bankrupt bought in excess of $15,000.00 or that was not to be on its floor would be paid for by the bankrupt on the usual terms. [74]

42.

At the time of Mr. Rothschild's conference with Mr. Irwin in March, 1928, the bankrupt owed Ketcham & Rothschild approximately $16,000.00 or $17,000.00, all of which was evidenced by the bankrupt's notes. At the same time there were pending orders from the bankrupt for goods, which said orders had not then been filed.

43.

The so-called consignment agreement (Petitioner's Ex. 1) and the letter dated March 23, 1928, were signed and delivered to Mr. Rothschild by the bankrupt on March 23, 1928, in Seattle. Ketcham & Rothschild signed the contract in Chicago on

March 30, 1928, and inserted that date in the instrument.

44.

No list of goods (referred to in paragraph 9 of the agreement) was attached to the contract at any time. At the time bankrupt signed the contract it furnished to Mr. Rothschild a memorandum of its stock cards and records. Upon this basis the parties took an approximate figure of the amount of goods of Ketcham & Rothschild *make then* in the possession of the bankrupt; the figure so taken did not differ far from the figure later agreed on when the bill of sale was given.

45.

On April 16, 1928, bankrupt executed and delivered to Ketcham & Rothschild a bill of sale for the goods on hand at the time of the execution of the so-called consignment agreement, and this bill of sale was filed April 24, 1928, for record in the office of the Auditor of King County, Washington.

46.

The bankrupt made some reports of sales but did not make these reports as required by the contract of March 30, 1928. The bankrupt paid Ketcham & Rothschild for all goods which the bankrupt reported sold. All these payments were made in cash with the exception of one payment which was made by note. [75]

From the evidence and records herein, I make the following

CONCLUSIONS.

1.

That the petitioners knowing the bankrupt's insolvency were concerned as to the collectibility of their accounts and entered into the so-called consignment agreements to obtain security for the then existing indebtedness and for the payment for any goods to be shipped thereafter.

2.

It was the intention of all the parties to make of the so-called consignment agreements a fraudulent concealment of actual sales.

3.

The so-called consignment agreements were contracts for sales and were not contracts of consignment or bailment.

4.

The so-called consignment agreement between the bankrupt and Irwin Company was not accepted by Irwin Company until September 5, 1928, which was subsequent to the completion and termination of all shipments of goods made by Irwin & Company to the bankrupt.

5.

There was no transfer of the possession or control from bankrupt to either petitioner of any goods of petitioners' manufacture which were in the bankrupt's possession on March 30th and April 1st, 1928.

6.

The bill of sale from bankrupt to Irwin Company was never filed for record and consequently was invalid as to the Trustee in Bankruptcy. [76]

7.

There was no consideration for any bill of sale from the bankrupt to the petitioners, except the cancellation of antecedent indebtedness of the bankrupt to the petitioners.

8.

Each bill of sale from the bankrupt to the petitioners was made while the bankrupt was insolvent, and without present consideration to the bankrupt, and was invalid as against the Trustee in Bankruptcy.

9.

The bankrupt at all times had unfettered possession, dominion and control over all the so-called consignment furniture of both petitioners, and over the proceeds thereof.

10.

Neither petitioner has any right, title or interest in any of the so-called consignment furniture nor in any of the proceeds thereof.

11.

Each of the petitioners is a general creditor and is not entitled to reclaim any of the so-called consignment furniture nor the proceeds thereof. [77]

QUESTIONS PRESENTED ON REVIEW.

The following questions relating to the petition of Ketcham & Rothschild and the petition of Irwin & Company, respectively, are presented on review:

Ketcham & Rothschild.

1. Was the contract dated March 30, 1928 (K. & R. Ex. 1) a contract of consignment or a contract for sale.

2. If it was a contract of consignment what property was affected by such consignment.

(a) By virtue of said contract did Renfro-Wadenstein become bailee of the goods shipped by Ketcham & Rothschild subsequent to the execution of the contract only, or

(b) Did Renfro-Wadenstein also become bailee of all the goods of Ketcham & Rothschild's manufacture which were in Renfro-Wadenstein's hands at the time the contract was executed.

3. In determining whether the title to the goods in Renfro-Wadenstein's possession and ownership at the time of the execution of the contract passed to Ketcham & Rothschild as against the Trustee in Bankruptcy, the following questions arise:

(a) Was the letter of March 23, 1928, a part of the contract of March 30, 1928.

(b) Was the transfer of title of Ketcham & Rothschild effected *in praesenti* by the contract of March 30th or was it effected by the bill of sale delivered April 16, 1928, and filed April 24, 1928.

(c) Was the instrument transferring the title recorded within ten days after the sale was made.

(d) Was the said property, which was attempted to be transferred by Renfro-Wadenstein to Ketcham & Rothschild, "left [78] in the possession" of Renfro-Wadenstein within the purview of Sec. 5827 of Rem. C. S.

(e) Was Renfro-Wadenstein insolvent at the time it attempted the transfer of its property to Ketcham & Rothschild.

(f) Was there any present consideration for such transfer or was the only consideration the satisfaction of an antecedent indebtedness.

4. If Ketcham & Rothschild as consignor retained title to the furniture did it also have and retain title to those receivables consisting of open accounts and contracts representing the proceeds of resales by Renfro-Wadenstein.

Irwin & Company.

1. Was the contract dated April 1, 1928 (Irwin's Ex. 27) a contract of consignment or a contract for sale.

2. If it was a contract of consignment when did it go into effect and what property was affected by such consignment.

(a) By virtue of said contract did Renfro-Wadenstein become bailee of the goods, if any, shipped by Irwin & Co. subsequent to the effective date of the contract only, or

(b) Of all the goods shipped subsequent to the execution of the contract, or

(c) Did Renfro-Wadenstein also become bailee of all the goods of Irwin & Co.'s manufacture which were in the possession and ownership of

Renfro-Wadenstein at the time the contract was executed.

3. In determining whether the title to the goods in Renfro-Wadenstein's possession and ownership at the time of the execution of the contract passed to Irwin & Co. as against the Trustee in Bankruptcy, the following questions arise:

(a) Was the letter of March 23, 1928, a part of the [79] contract of April 1, 1928.

(b) Was the transfer of title to Irwin & Co. effected *in praesenti* by the contract of April 1, 1928, or was it effected by the bill of sale dated August 6, 1928 (Irwin's Ex. 28), which was never recorded.

(c) Was the said property, which was attempted to be transferred by Renfro-Wadenstein to Irwin & Co. "left in the possession" of Renfro-Wadenstein within the purview of Sec. 5827 of Rem. C. S.

(d) Was Renfro-Wadenstein insolvent at the time it attempted the transfer of its property to Irwin & Co.

(e) Was there any present consideration for such transfer or was the only consideration the satisfaction of an antecedent indebtedness.

4. If Irwin & Co. as consignor retained title to the furniture did it also have and retain title to those receivables consisting of open accounts and contracts representing the proceeds of resales by Renfro-Wadenstein.

PAPERS TRANSMITTED.

I transmit herewith for the information of the Judge the following papers:

1. Petition of Robert W. Irwin Company for reclamation.
2. Answer of trustee to petition of Robert W. Irwin Company.
3. Reply of Robert W. Irwin Company to answer of trustee.
4. Petition of Ketcham & Rothschild for reclamation.
5. Answer of trustee to petition of Ketcham & Rothschild.
6. Reply of Ketcham & Rothschild to answer of trustee.
7. Referee's order denying petition of Robert W. Irwin Company. [80]
8. Referee's order denying petition of Ketcham & Rothschild.
9. Exceptions of Robert W. Irwin Company to findings of Referee.
10. Exceptions of Ketcham & Rothschild to findings of Referee.
11. Petition of Robert W. Irwin Company for review of Referee's order.
12. Petition of Ketcham & Rothschild for review of Referee's order.
13. Stipulation filed August 8, 1929, for hearing before Referee Ben L. Moore.
14. Stipulation filed January 8. 1929, for taking deposition of Robert W. Irwin, witness on behalf of Robert W. Irwin Company.

15. Stipulation filed December 5, 1928, to preserve rights of petitioners Robert W. Irwin Company and Ketcham & Rothschild, Inc., in merchandise and accounts receivable and proceeds thereof.
16. Referee's order based on said stipulation filed December 5, 1928.
17. Deposition of Robert W. Irwin together with exhibits thereto attached marked 1 to 56, inclusive.
18. Transcript of testimony taken at the hearing.
19. Exhibits introduced at hearing as follows: Petitioner's Exhibit 1 to 23, inclusive, 25 to 32, inclusive, 34 to 56, inclusive (Petitioner's Exhibit 55 is the above-mentioned deposition of Robert W. Irwin; Petitioner's Exhibit 56 is the stipulation preserving the rights of petitioners to merchandise and receivables, which said paper is hereinabove listed as No. 15.) [81] Trustee's Exhibit "A" to "Q" inclusive.
20. Referee's Memorandum Decision dated April 23, 1930.

Dated at Seattle, in said District, this 31st day of December, 1930.

Respectfully submitted,
BEN L. MOORE,
Referee in Bankruptcy. [82]

[Title of Court and Cause.]

PETITION FOR RECLAMATION OF ROBERT W. IRWIN COMPANY.

The petition of Robert W. Irwin Company, a corporation, respectfully shows and alleges:

I.

That your petitioner is now, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal place of business in Grand Rapids in said State, and engaged in the designing and manufacture of furniture.

II.

That at all times hereinafter mentioned, the above-named bankrupt, Renfro-Wadenstein, a corporation was engaged in business in the City of Seattle, King County, Washington, as a retailer of furniture.

III.

That heretofore and on, to wit, the 1st day of April, 1928, petitioner and Renfro-Wadenstein, a corporation, the above-named bankrupt, made and entered into a consignment agreement, a copy of which is hereto attached, marked Petitioner's Exhibit No. 1 and by this reference incorporated herein the same as if set forth herein in full.

IV.

That heretofore and on, to wit, the 6th day of August, 1928, Renfro-Wadenstein, a corporation,

the above-named [83] bankrupt, for a valuable consideration and for the purpose of carrying out the terms and provisions of Paragraph 9 of the consignment agreement heretofore referred to as Petitioner's Exhibit No. 1, sold to petitioner certain furniture and merchandise, at the same time executing and delivering to petitioner a bill of sale therefor, a copy of which bill of sale is hereto attached, marked Petitioner's Exhibit No. 2, and by this reference incorporated herein the same as if set forth in full.

V.

That subsequent to the execution of said consignment agreement, heretofore referred to as Petitioner's Exhibit No. 1, and pursuant to the terms thereof, petitioner shipped to the above-named bankrupt on consignment and for the purpose set forth in and contemplated by said consignment agreement, certain merchandise and furniture, a list of which is attached hereto and marked Petitioner's Exhibit No. 3, and by this reference incorporated herein the same as if set forth herein in full.

VI.

That heretofore and on, to wit, the 3d day of October, 1928, the said Renfro-Wadenstein, a corporation, being then in a failing condition, its affairs, business and assets were taken over by one S. T. Hills as assignee for the benefit of the creditors of the said Renfro-Wadenstein, a corporation, under a common-law assignment, and that the said S. T. Hills, as said assignee, has since said date

continued to and does now assume to act for the above-named bankrupt, having charge of the assets and properties thereof, and in addition thereto the properties of the petitioner hereinabove referred to. [84]

VII.

That heretofore and on, to wit, the 22d day of October, 1928, your petitioner caused to be served upon the said Renfro-Wadenstein, a corporation, bankrupt above named, and S. T. Hills, as assignee, a notice advising them of the termination and cancellation of the consignment agreement, heretofore referred to as Petitioner's Exhibit No. 1, as provided for by the terms of paragraph 10 of said agreement, at the same time making demand upon the said S. T. Hills, as said assignee, and upon the said Renfro-Wadenstein, a corporation, for the return to petitioner of all goods and furniture shipped to the said Renfro-Wadenstein, a corporation, under said agreement, together with all goods and furniture sold and conveyed by the said Renfro-Wadenstein, a corporation, to petitioner by virtue of said bill of sale heretofore referred to as Petitioner's Exhibit No. 2, and for the return to petitioner of accounts representing consigned goods heretofore sold by the said Renfro-Wadenstein, a corporation, for which remittance to petitioner had not been made, as provided for by the terms of paragraph 10 of Petitioner's Exhibit No. 1, and that the said S. T. Hills, as said assignee, and the said Renfro-Wadenstein, a corporation,

have failed and neglected to comply in any manner with the terms of said notice and demand.

VIII.

That all and singular the furniture and merchandise contained and set forth in Petitioner's Exhibits Nos. 2 and 3 are now, and have at all times been, the property of petitioner and that petitioner is now, and has at all times been, entitled to the immediate possession thereof, and that all of said furniture and merchandise is now, [85] with the exception of certain pieces of furniture contained in Petitioner's Exhibits Nos. 2 and 3 which have been sold by the said Renfro-Wadenstein, a corporation, or the said S. T. Hills, as assignee, and the description of which is not at this time known to petitioner, in the hands and possession of the above-named bankrupt, Renfro-Wadenstein, a corporation, and S. T. Hills, as said assignee, and that the petitioner is the owner and entitled to the immediate possession of all accounts receivable representing furniture and merchandise owned by petitioner and sold by the said Renfro-Wadenstein, a corporation, and/or the said S. T. Hills, as assignee, the number of which sales and the description of the furniture and merchandise so sold being, as previously alleged by petitioner, unknown to it, and that the petitioner is the owner and entitled to the immediate possession of the moneys collected by the said Renfro-Wadenstein, a corporation, and the said S. T. Hills, as assignee, as the purchase price on petitioner's goods so sold by them and not remitted to petitioner, said moneys now being in

the hands of the said Renfro-Wadenstein, a corporation, bankrupt above named, or the said S. T. Hills, as assignee, and readily traceable and distinguishable as being the proceeds of the sale of petitioner's said furniture.

WHEREFORE, your petitioner respectfully prays:

1. For the return to it in kind of so much of its furniture and merchandise, more particularly described in Petitioner's Exhibits Nos. 2 and 3, as is now remaining in the hands of the said Renfro-Wadenstein, a corporation, bankrupt above named, and/or the said S. T. Hills, as assignee. [86]

2. For the return to it of any and all accounts receivable, representing any of the merchandise and furniture listed in Petitioner's Exhibits Nos. 2 and 3, which has been sold by the said Renfro-Wadenstein, a corporation, or the said S. T. Hills, as assignee.

3. For the return to it of those moneys now in the hands of the said Renfro-Wadenstein, a corporation, or the said S. T. Hills, as assignee, representing the proceeds of the sale of any of the goods and merchandise described in Petitioner's Exhibits Nos. 2 and 3 for which no accounting has been made to petitioner.

4. For such other and further relief as may be just in the premises.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner.

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe Emory, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for Robert W. Irwin Company, a corporation, petitioner herein; that he makes this verification for and on behalf of said petitioner for the reason that none of the officers or agents of said petitioner are now within, or reside within, King County, Washington; that he has read the above and foregoing petition for reclamation, knows the contents thereof and believes the same to be true.

DeWOLFE EMORY.

Subscribed and sworn to before me, this 17th day of November, 1928.

[Seal] JUDSON F. FALKNOR,
Notary Public in and for the State of Washington,
Residing at Seattle. [87]

PETITIONER'S EXHIBIT No. 1.

MEMORANDUM OF AGREEMENT made in Duplicate this first day of April, 1928, between ROBERT W. IRWIN COMPANY of Grand Rapids, Michigan, as party of the first part, and Renfro-Wadenstein, a Corporation of Seattle, Washington, as party of the second part. WITNESSETH as follows:

1. Party of the first part agrees that it will from time to time ship goods on consignment to said party of the second part at its place of business in Seattle, consisting of such articles manufactured or handled by party of the first part as party of the second part shall from time to time order, whether from its "Phoenix" or "Royal" lines. All such goods shall be shipped f. o. b. Grand Rapids, Michigan, and shall be invoiced to party of the second part and shall be charged provisionally to the consigned account of said party of the second part. The maximum amount of goods to be at any time shipped on consignment hereunder shall be such as shall be satisfactory to said party of the first part.
2. Party of the second part shall accept delivery of all goods so shipped on its order and shall pay all freight and carriage charges immediately upon arrival, and shall promptly insure said goods in the name of said party of the first part against damage by fire or water to the full insurable value thereof, and shall care for said goods pending sale thereof for party of the first part, but at the expense of said party of the second part. Said party of the second part shall hold said goods exclusively for the purpose of resale for the account of said party of the first part at prices not less than the net invoice price.

3. Party of the second part shall be entitled to retain, by way of commission on sales made, the surplus obtained and collected by it on the sale of specific items over and above the invoice price thereof, after such invoice price has been collected and remitted to first party.
4. Party of the second part shall keep an itemized record of all sales of such consigned goods separate and distinct from its other sales and shall deliver to party of the first part, promptly upon the first and fifteenth of each month, a full copy thereof showing all sales of consigned goods made during the preceding one-half month, including the items sold, the selling price, terms, and name and address of the purchaser in each case, and all collections made on such sales.
5. It shall be the duty of the party of the second part to remit all monies collected by party of the second part from each purchaser until the amount due the first party thereon has been paid in full; such remittance to be on the Twentieth of each month for goods sold during the preceding month. In case party of the second part, due to its not having received from its customer payment for goods sold, shall not be able to make payment in [88] cash, it shall give the party of the first part a demand note collateraled by the assignment of accounts receivable at least equal to the amount of payment due for merchandise sold.

Party of the second part does hereby guarantee the credit of all customers and purchasers and the collection of all accounts created on the sale of such goods.

6. Party of the second part shall pay to party of the first part a carrying charge equal to seven percent for the time after ninety days from date of shipment that merchandise remains in second party's possession unsold. Settlements for this carrying charge shall be made on the first day of January and July of each year.

7. Neither the invoicing of said consigned goods to the party of the second part nor the charging of the same to it on the books of said party of the first part, nor the handling of such transactions, whether for convenience or otherwise, in any manner or form inconsistent herewith shall be deemed to change or discontinue this agreement or prevent said consigned goods from being held, handled and remitted for under and according to the terms hereof.

8. In case any of said goods shall at any time be recalled by said party of the first part, the said party of the second part shall crate and place on cars at Seattle.

9. Said party of the second part now has in its possession certain goods, as per attached list, which have heretofore been sold and delivered to it by said party of the first part on credit, and which have not been paid

for, and it is hereby agreed that the title to said goods, and the same is hereby transferred and conveyed back to said party of the first part, and that from and after this date the same shall be treated as having been delivered to said party of the second part on consignment and under and subject to all of the terms and conditions of this contract. In consideration of the transfer and conveyance of the title to said goods back to said party of the first part, that company does hereby cancel the indebtedness of said party of the second part for said goods.

10. This contract shall continue in force and effect until terminated by one or both of the parties hereto by written notice given to the other, but in case of such termination party of the first part shall have the right at its option to require party of the second part to keep and pay for the consigned goods then remaining on hand at the invoiced price thereof, party of the second part to be entitled to the following terms:

Twenty-five (25%) per cent thereof every Thirty (30) days until fully paid.

The consigned goods or the accounts representing the same and the proceeds thereof shall continue to belong to and be the property of said party of the first part until remittance therefor shall have been made to

and received by said party of the first part as herein provided. [89]

In the event that party of the first part shall not elect to sell said goods to party of the second part, then upon termination of the contract it shall be the duty of party of the second part to crate and place on cars at Seattle, unless otherwise directed by party of the first part.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized officers the day and year above written.

ROBERT W. IRWIN COMPANY.
By ROBERT W. IRWIN, Prest.
RENFRO–WADENSTEIN.
By O. A. WADENSTEIN,
President. [90]

PETITIONER'S EXHIBIT No. 2.

KNOW ALL MEN BY THESE PRESENTS:

That, Renfro-Wadenstein, of Seattle, Wash., County of King, State of Washington, the party of the first part, for and in consideration of the sum of Fourteen Thousand four hundred ninety 35/100 ($14,490.35) Dollars lawful money of the United States of America, to them in hand by Robert W. Irwin Company of Grand Rapids, Mich., the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and deliver unto the said party of the second part, the following described personal property now

located at 1424 Fifth Ave., Seattle, Wash., in the City of Seattle in the County of King and State of Washington, to-wit:

1	1359	Table		45.00
1	1329	Table		75.00
1	1339	Nest of Tables		68.00
1	1349	Nest of Tables		72.00
1	1336	Nest of Tables		85.00
1	1366	Table		45.00
1	1330	Nest of Tables		145.00
1	1242	Table		80.00
1	1314	Table		76.00
1	1326	Table		165.00
1	1338	Table		425.00
1	9075	Sideboard	200.00	
1	9076	Server	140.00	
1	9077	Cabinet	200.00	
1	9078	Table	218.00	
5	9079	Side chairs at 50.00	250.00	
1	9079½	Arm chair	67.00	
		Cover	77.00	1152.00
2	5020½	Beds 500.00	1000.00	
1	5021	Dresser	625.00	
1	5022	Chest	505.00	
1	5023	Night Stand	95.00	
1	5024	Dress. Table	615.00	
1	5027	Chair	80.00	
1	5028	Bench	80.00	
		Cover	46.50	3046.50
1	9020	Sideboard	288.00	

1	9021	Server	140.00	
1	9022	Cabinet	180.00	
1	9023	Table	225.00	
5	9024	Side Chairs at 48.00	240.00	
1	9024½	Arm chair	56.00	
		Cover	107.50	
			1236.50	
		Less 50.00 Lacq. All.	50.00	1186.50

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1	1303	Table		29.00
1	172¼	Bookcase		46.00
1	490	Desk		67.00
1	514½	Desk		510.00
1	9	Screen		120.00
2	4750½	Beds 150.00	300.00	
1	4751	Dresser	265.00	
1	4752	Chest	250.00	
1	4753	Night Stand	40.00	
1	4754	Vanity	235.00	
1	4757	Chair	35.00	
1	4758	Bench	30.00	
			1155.00	
		Less 25%	288.75	
			866.25	
		Cover	12.75	879.00
2	4980½	Beds 315.00	630.00	
1	4981	Dresser	390.00	
1	4982	Chest	325.00	

1	4983	Night Table	85.00	
1	4984	Vanity	475.00	
1	4987	Chair	70.00	
1	4988	Bench	80.00	
		Cover	12.95	2067.95
1	498	Desk		65.00
1	508	Desk		125.00
1	1313	Drop Leaf Table		64.00
1	1317	Table		47.00
1	1308	Table		69.00
1	9010	Sideboard	235.00	
1	9011	Server	195.00	
1	9012	Cabinet	250.00	
1	9013	Table	250.00	
5	9014	Side Chairs 35.00 ...	175.00	
1	9014½	Arm Chair	47.00	
		Cover	139.00	1291.00
1	1198	Tilt Top Table		44.00
1	1270	Nest of Tables		66.00
1	1278	Tilt Top Table		65.00
1	1290	Table		20.00
1	1302	End Table		28.00
1	1254	Table		44.00
1	507	Desk		145.00
1	494	Desk		110.00
1	8975	Sideboard	420.00	
1	8976	Server	260.00	
1	8977	Cabinet	365.00	
1	8978	Table	415.00	

5	8979	Side Chairs 70.00	350.00	
1	8979½	Arm Chair	90.00	
		Cover	22.50	1922.50
				$14,490.45

[92]

To Have and to Hold the same to the said party of the second part, its heirs, executors, administrators, and assigns forever: And said party of the first part, for their heirs, executors, administrators, covenant and agree to and with the said party of the second part, its executors, administrators and assigns, that said party of the first part is the owner of the said property, goods and chattels and has good right and full authority to sell the same, and that they will warrant and defend the sale hereby made unto the said party of the second part, its executors, administrators and assigns, against all and every person or persons, whomsoever, lawfully claiming or to claim the same,

IN WITNESS WHEREOF the said party of the first part has hereunto set its hand and seal the 6th day of August, 1928.

RENFRO–WADENSTEIN,
By O. A. WADENSTEIN,
President.
By R. R. RENFRO,
Secretary.

Signed and delivered in the presence of
MYRTLE WHALEY. [93]

PETITIONER'S EXHIBIT No. 3.

RENFRO-WADENSTEIN CO., SEATTLE, WASH.

PHOENIX DIVISION.

September 24, 1928.

Apr. 3, 1928	2	3420½	Beds Mhy. & Gum 39.00		78.00
	1	3421	Dresser		63.00
	1	3422	Chiffonier		52.00
	1	3423	Night Stand		14.00
	1	3424	Toilet Table		56.00
	1	3427	Chair		13.00
	1	3428	Bench		13.00
			Cover		2.75
	1	5690	Sideboard Aged Oak 112.00		
	1	5691	Server		65.00
	1	5692	Cabinet		84.00

Apr. 3, 1928	1	5693	Table		80.00
	5	5694	S. Chairs	17.00	85.00
	1	5694½	A. Chair		24.00
			Cover		14.00
	1	5720	Sideboard Wal. & Gum		64.00
	1	5721	Server		33.00
	1	5722	Cabinet		49.00
	1	5723	Table		54.00
	5	5724	S. Chairs	11.00	55.00
	1	5724½	A. Chair		15.00
			Cover		10.50
	1	5730	Sideboard P. V. & Maple		83.00
	1	5731	Server		50.00
	1	5732	Cabinet		68.00
	1	5733	Table		72.00
	5	5734	S. Chairs	17.00	85.00
	1	5734½	A. Chair		22.00
			Cover		20.00

Apr. 4, 1928	1	5680	Sideboard Wal. & Maple		180.00
	1	5681	Server		110.00
	1	5682	Cabinet		150.00
	1	5683	Table		135.00
	5	5684	S. Chairs	32.00	160.00
	1	5684½	A. Chair		40.00
			Cover		48.00
Apr. 6, 1928	2	3510½	Beds Wal. & Gum	60.00	120.00
	1	3511	Dresser		105.00
	1	3512	Chest		81.00
	1	3513	Stand		24.00
	1	3514	T. Table		70.00
	1	3517	Chair		18.00
	1	3518	Bench		17.00
			Cover		7.00
Apr. 11, 1928	1	5600	Sideboard Wal.		335.00
	1	5601	Server		170.00
	1	5602	Cabinet		325.00

	Apr. 11, 1928	1	5603	Table	310.00	
		5	5604	S. Chairs	58.00 290.00	
		1	5604½	A. Chair	70.00	
				Cover	110.00	
[94]						
	May 22, 1928	2	3470½	Beds R. W. & Maple	102.00 204.00	
		1	3471	Dresser	156.00	
		1	3472	Chiffonier	144.00	
		1	3473	Night Stand	40.00	
		1	3474	T. Table	152.00	
		1	3477	Chair	44.00	
		1	3478	Bench	37.00	
				Cover	45.00	
	July 30,	1	3423	Stand Mhy. & Maple	14.00	5148.25
	Apr. 13	1	1367	Table	275.00	
		1	1374	Table	35.00	
		1	1354	Coffee Table	50.00	

Apr. 13	1	1316	Coffee Table	60.00	
	1	1324	Coffee Table	52.00	
	1	1340	Bench	58.00	
	1	1362	A. Chair	98.50	
	1	510	Desk	85.00	
	1	1336	Table	85.00	
	1	516–2	Secretary	250.00	
	1	1369	Table	275.00	
	1	1360	End Table	26.00	
	1	1370	Coffee Table	36.00	
	1	1366	Table	45.00	
	1	1267	Table	42.00	
	1	1287	Nest of Tables	62.00	
	1	1337	End Table	35.00	1569.50
Apr. 13	2	5210½	Beds Mhy. 82.00	164.00	
	1	5211	Dresser	130.00	
	1	5212	Chest	110.00	

Apr. 13	1	5213	Night Stand	20.00	
	1	5214	Dressing Table	85.00	
	1	5217	Chair	19.00	
	1	5218	Bench	19.00	
			Cover	3.25	550.25
Apr. 13	2	5000½	Beds Mhy. 92.00	184.00	
	1	5001	Dresser	145.00	
	1	5002	Chest	115.00	
	1	5003	Night Stand	27.00	
	1	5004	Dressing Table	115.00	
	1	5007	Chair	25.00	
	1	5008	Bench	20.00	
			Cover	5.25	
	2	5200½	Beds Mhy. & S. W. 110.00	220.00	
	1	5201	Dresser	145.00	
	1	5202	Chest	125.00	
	1	5203	Night Stand	30.00	

Apr. 13	1	5204	Dressing Table	135.00	
	1	5207	Chair	25.00	
	1	5208	Bench	30.00	
			Cover	19.25	1365.50
Apr. 13, 1928	1	9115	Sideboard	230.00	
	1	9116	Server	142.00	
	1	9117	Cabinet	210.00	
	1	9118	Table	235.00	
	5	9119	S. Chairs 58.00	290.00	
	1	9119½	A. Chair	73.00	
			Cover	21.00	
	1	9135	Sideboard	125.00	
	1	9136	Server	85.00	
[95]					
	1	9137	Cabinet	110.00	
	1	9138	Table	120.00	
	5	9139	S. Chairs 25.00	125.00	

Apr. 13, 1928	1	9139½	A. Chair		30.00
			Cover		15.00
	1	9125	Sideboard		140.00
	1	9126	Server		88.00
	1	9127	Cabinet		125.00
	1	9128	Table		119.00
	5	9129	S. Chairs	28.00	140.00
	1	9129½	A. Chair		38.00
			Cover		40.00
	1	9050	Sideboard		218.00
	1	9051	Server		117.00
	1	9052	Cabinet		165.00
	1	9053	Table		148.00
	5	9054	S. Chairs	32.00	160.00
	1	9054½	A. Chair		42.00
			Cover and Nails		42.00

Apr. 13, 1928	1	9120	Sideboard	225.00	
	1	9121	Server	175.00	
	1	9122	Cabinet	225.00	
	1	9123	Table	200.00	
	5	9124	S. Chairs	52.00 260.00	
	1	9124½	A. Chair	65.00	
			Cover	49.00	4582.50
Apr. 4	1	1355	A. Chair	67.00	
	1	1356	A. Chair	77.00	144.00
May 25	1	1222	Nest of Tables	76.00	
	2	5100½	Beds	125.00 250.00	
	1	5101	Dresser	215.00	
	1	5102	Chest	170.00	
	1	5103	Night Stand	40.00	

May 25	1	5104	Dressing Table	185.00	
	1	5107	Chair	45.00	
	1	5108	Bench	45.00	
	1		Cover	10.50	1036.50
May 29,	1	1348	Console	225.00	
	1	1348½	Mirror 130.00	355.00	
Aug. 8,	1	1350	Lift Lid Table	85.00	
	1	1361	Coffee Table	33.00	118.00
Aug. 20,	1	515–2	Secretary	185.00	185.00
					15,054.50

[Endorsed]: Filed this 17 day of Nov. 1928, at 10 o'clock A. M. C. R. Hawkins, Referee [96]

[Title of Court and Cause.]

ANSWER OF TRUSTEE TO PETITION OF RECLAMATION OF ROBERT W. IRWIN COMPANY.

Comes now W. S. Osborn, the duly appointed, acting and qualified Trustee of the estate of the above-named bankrupt, having succeeded and superceded S. T. Hills as assignee, and, for answer to the petition for reclamation of Robert W. Irwin Company, alleges:

I.

Answering Paragraphs I and II, the Trustee admits the same.

II.

Answering Paragraph III, the Trustee denies the same.

III.

Answering Paragraph IV, the Trustee denies that the alleged agreements were executed for any consideration or were effective for any purpose.

IV.

Answering Paragraph V, the Trustee denies the same.

V.

Answering Paragraph VI, Trustee alleges that the said Hills as assignee was superseded in the charge of the assets and properties of the bankrupt on November 15, 1928, by John L. McLean, Receiver, who in turn was superceded by answering Trustee and the Trustee denies each and every other allegation.

VI.

Answering Paragraph VII, Trustee denies the same.

VII.

Answering Paragraph VIII, the Trustee denies each and every allegation therein. [97]

For further answer and by way of a further and separate defense thereto, Trustee alleges:

I.

That the bankrupt, Renfro-Wadenstein, at all times referred to in the petition and in this answer, *have* been a corporation organized under the laws of the State of Washington. That the alleged consignment agreement described as Petitioner's Exhibit 1 and the alleged bill of sale described as Exhibit 2, conceding the same to have been entered into between the parties therein named, as alleged in the petition, are each of them fraudulent and void as to this Trustee and title to the property, assets and the proceeds therefrom claimed by the petitioner and referred to in said petition and the exhibits attached thereto passed to the Trustee notwithstanding for the following reasons:

(1) Neither the alleged consignment agreement (Exhibit No. 1) nor the alleged bill of sale (Exhibit No. 2) were recorded in the office of the Auditor of King County, Washington, in which the property was situated, within ten days after such alleged sale had been made, as required by Section 5827, Remington's Compiled Statutes.

(2) Said alleged sale was a mere pretense and disguise of the real transaction, which transaction was in fact an attempt between the parties to give the petitioner security on the merchandise described in said bill of sale for an antecedent indebtedness owing the petitioner from the bankrupt for the purchase price of said merchandise. That although a bill of sale in form, Exhibit 2 was in truth and in law a chattel mortgage and therefore fraudulent and void as against this Trustee because it was not executed and filed in the office of the County Auditor of King County wherein the mortgaged property was situated, as required by Sections 3780–3781–3782, Remington's Compiled Statutes. [98]

(3) That at the time of the execution of said instrument and at all times thereafter, Renfro-Wadenstain, vendor therein, was insolvent, both within the provisions of the Bankruptcy Act and within the Washington State rule of insolvency, with the full knowledge of petitioner, and the purpose and effect thereof was to create a preference in favor of the said petitioner and the same and each of them are therefore invalid as to this Trustee.

(4) The alleged consignment agreement was a mere masquerade in writing under which it was intended in fact between the parties that petitioner should sell and deliver merchandise to the bankrupt and retain a lien thereon so as to secure the price without making a public record of the transaction and the bankrupt and petitioner endeavored thereby under the pretense of a consignment that the bankrupt should buy and pay for all of said

merchandise, but that if the purchaser became insolvent or bankrupt a claim might be advanced that the transaction entitled the petitioner to a lien thereon or the retention of title thereto.

(5) That both by the face of said contracts and by the conduct of the parties thereunder the transaction was in fact a sale with clauses therein attempting to constitute the same conditional sale and therefore a fraud upon the creditors of the vendee therein named, and as a conditional sale the same is invalid as to this Trustee because it was not executed and filed in the Auditor's office of King County, State of Washington, in the manner and within the time required by Sections 3790–3791 of Remington's Compiled Statutes, State of Washington.

WHEREFORE, having fully answered, the Trustee demands judgment dismissing the petition of the claimant herein with costs. [99]

LEOPOLD M. STERN,
BAUSMAN, OLDHAM & EGGERMAN,
Attorneys for Trustee.

Office and P. O. Address:
1408–1413 Hoge Bldg.,
Seattle, Washington,
King County.

State of Washington,
County of King,—ss.

W. S. Osborn, being first duly sworn, on his oath deposes and says: That he is the Trustee above named; that he has read the foregoing answer,

knows the contents thereof, and believes the same to be true.

W. S. OSBORNE.

Subscribed and sworn to before me this 5 day of December, 1928.

LOUISE J. LYON,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed this 9 day of Jan., 1929, at 2 o'clock P. M. [100]

[Title of Court and Cause.]

REPLY OF ROBERT W. IRWIN COMPANY TO ANSWER OF TRUSTEE.

Comes now Robert W. Irwin Company, a corporation, petitioner herein, and replying to the affirmative matter contained in the answer of the Trustee to the petition of reclamation of Robert W. Irwin Company, admits and denies as follows:

I.

Admits that the bankrupt, Renfro-Wadenstein, at all times referred to in the petition and in said Trustee's answer was a corporation organized under the laws of the State of Washington, but denies

*w*ach and every other allegation in said further answer and further and separate defense contained.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Robert W. Irwin Company, a Corporation, Petitioner.
Office & P. O. Address:
977 Dexter Horton Bldg.,
Seattle, Washington.

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe Emory, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for Robert W. Irwin Company, the petitioner herein, and as such makes this verification for and on behalf of said petitioning corporation for the reason that none of the officers of said corporation are within the District and Division aforesaid; that he has read the foregoing reply, knows the contents thereof, and believes the same to be true.

DeWOLFE EMORY.

Subscribed and sworn to before me this 15 day of December, 1928.

[Notarial Seal] JUDSON F. FALKNOR,
Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Filed this 19 day of Dec., 1928, at 2 o'clock P. M. [101]

[Title of Court and Cause.]

PETITION FOR RECLAMATION OF KETCHAM & ROTHSCHILD, INC.

To the District Court of the United States for the Western District of Washington, Northern Division:

The petition of Ketcham & Rothschild, Inc., a corporation, respectfully shows and alleges:

I.

That your petitioner is now and was at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in Chicago in said state and engaged in the designing and manufacture of furniture.

II.

That at all times hereinafter mentioned the above-named bankrupt, Renfro-Wadenstein, a corporation, was engaged in business in the city of Seattle, King County, Washington, as a retailer of furniture.

III.

That heretofore and on, to wit, the 30th day of March, 1928, petitioner and Renfro-Wadenstein, a corporation, the above-named bankrupt, made and entered into a consignment agreement, a copy of which is hereto annexed, marked Petitioner's Exhibit No. 1, and by reference incorporated herein the same as if set forth herein in full.

IV.

That heretofore and on, to wit, the 16th day of [102] April, 1928, Renfro-Wadenstein, a corporation, the above-named bankrupt, for valuable consideration and for the purpose of carrying out the terms and provisions of Paragraph 9 of the consignment agreement, heretofore referred to as Petitioner's Exhibit No. 1, sold to petitioner certain furniture and merchandise, at the same time executing and delivering to petitioner a bill of sale therefor, which bill of sale was thereafter and on, to wit, the 24th day of April, 1928, filed for record in the office of the Auditor at Seattle, King County, Washington, a copy of which bill of sale is hereto attached marked Petitioner's Exhibit No. 2, and by this reference incorporated herein the same as if set forth herein in full.

V.

That subsequent to the execution of said consignment agreement, heretofore referred to as Petitioner's Exhibit No. 1, and pursuant to the terms thereof, petitioner shipped to the above-named bankrupt on consignment and for the purpose set forth in and contemplated by said consignment agreement, certain merchandise and furniture, a list of which is attached hereto and marked Petitioner's Exhibit No. 3, and by this reference incorporated herein the same as if set forth herein in full, said Petitioner's Exhibt No. 3 including not only the furniture and merchandise so shipped by petitioner to said bankrupt pursuant to the terms and provisions of Petitioner's Exhibit No. 1, but also in-

cluding the furniture and merchandise sold by said bankrupt to petitioner under and by virtue of the bill of sale, heretofore referred to as Petitioner's Exhibit No. 2, as contemplated by the provisions of Paragraph 9 of Petitioner's Exhibit No. 1. [103]

VI.

That heretofore and on, to wit, the 3d day of October, 1928, the said Renfro-Wadenstein, a corporation, being then in a failing condition, its affairs, business and assets were taken over by one S. T. Hills as assignee for the benefit of the creditors of the said Renfro-Wadenstein, a corporation, under a common-law assignment, and that the said S. T. Hills, as said assignee, has since said date continued to and does now assume to act for the above-named bankrupt, having charge of the assets and properties thereof, and in addition thereto the properties of the petitioner hereinabove referred to.

VII.

That heretofore and on, to wit, the 22d day of October , 1928, your petitioner caused to be served upon the said Renfro-Wadenstein, a corporation, bankrupt above named, and S. T. Hills, as assignee, a notice advising them of the termination and cancellation of the consignment agreement, heretofore referred to as Petitioner's Exhibit No. 1, as provided for by the terms of Paragraph 10 of said agreement, at the same time making demand upon the said S. T. Hills, as said assignee, and upon the said Renfro-Wadenstein, a corporation, for the return to petitioner of all goods and furniture shipped

to the said Renfro-Wadenstein, a corporation, under said agreement, together with all goods and furniture sold and conveyed by the said Renfro-Wadenstein, a corporation, to petitioner by virtue of said bill of sale, heretofore referred to as Petitioner's Exhibit No. 2, and for the return to petitioner of accounts representing consigned goods heretofore sold by the said Renfro-Wadenstein, a corporation, for which remittance to petitioner had not been made, as provided for by the terms of Paragraph 10 of [104] Petitioner's Exhibit No. 1, and that the said S. T. Hills, as said assignee, and the said Renfro-Wadenstein, a corporation, have failed and neglected to comply in any manner with the terms of said notice and demand.

VIII.

That all and singular the furniture and merchandise contained and set forth in Petitioner's Exhibit No. 3 is now and has at all times been the property of petitioner and that petitioner is now and has at all times been entitled to the immediate possession thereof and that all of said furniture and merchandise is now, with the exception of certain pieces of furniture contained in Petitioner's Exhibit No. 3 which have been sold by the said Renfro-Wadenstein, a corporation, or the said S. T. Hills, as assignee, and the description of which is not at this time known to the petitioner, in the hands and possession of the above-named bankrupt, Renfro-Wadenstein, a corporation, and S. T. Hills, as said assignee, and that the petitioner is the owner and entitled to the immediate possession of all accounts receivable, representing furniture and merchandise

owned by petitioner and sold by the said Renfro-Wadenstein, a corporation, and/or the said S. T. Hills, as assignee, the number of which said sales and the description of the furniture and merchandise so sold being, as previously alleged by petitioner, unknown to it, and that the petitioner is the owner and entitled to the immediate possession of moneys collected by the said Renfro-Wadenstein, a corporation, and the said S. T. Hills, as said assignee, as the purchase price on petitioner's goods so sold by them and not remitted to petitioner, said moneys now being in the hands of the said Renfro-Wadenstein, a corporation, bankrupt above named, or the said S. T. Hills, as assignee, [105] and readily traceable and distinguishable as being the proceeds of the sale of petitioner's said furniture.

WHEREFORE, your petitioner respectfully prays:

1. For the return to it in kind of so much of its furniture and merchandise, more particularly described in Petitioner's Exhibit No. 3, as is now remaining in the hands of the said Renfro-Wadenstein, a corporation, bankrupt above named, and/or the said S. T. Hills as assignee.

2. For the return to it of any and all accounts receivable, representing any of the merchandise and furniture listed in Petitioner's Exhibit No. 3, which has been sold by either the said Renfro-Wadenstein, a corporation, or the said S. T. Hills, as assignee.

3. For the return to it of those moneys now in the hands of the said Renfro-Wadenstein, a corpo-

ration, and/or the said S. T. Hills, as assignee, representing the proceeds of the sale of any of the goods and merchandise described in Petitioner's Exhibit No. 3, for which no accounting has been made to petitioner.

4. For such other and further relief as may be just in the premises.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner. [106]

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe Emory, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for Ketcham & Rothschild, Inc., a corporation, petitioner herein; that he makes this verification for and on behalf of said petitioner for the reason that none of the officers or agents of said petitioner are now within, or reside within, King County, Washington; that he has read the above and foregoing petition for reclamation, knows the contents thereof and believes the same to be true.

DeWOLFE EMORY.

Subscribed and sworn to before me this 17 day of November, 1928.

[Seal] JUDSON F. FALKNOR,
Notary Public in and for the State of Washington,
Residing at Seattle. [107]

PETITIONER'S EXHIBIT No. 1.

MEMORANDUM OF AGREEMENT made in duplicate this 30th day of March, 1928, between KETCHAM & ROTHSCHILD, INC., of Chicago, Illinois, as party of the first part, and Renfro-Wadenstein, a corporation of Seattle, Washington, as party of the second part, WITNESSETH, as follows:

1. Party of the first part agrees that it will from time to time ship goods on consignment to said party of the second part at its place of business in Seattle, consisting of such articles manufactured or handled by party of the first part as party of the second part shall from time to time order from the Ketcham & Rothschild line. All such goods shall be shipped f. o. b. Chicago, Illinois, and shall be invoiced to party of the second part and shall be charged provisionally to the consigned account of said party of the second part. The maximum amount of goods to be at any time shipped on consignment hereunder shall be such as shall be satisfactory to said party of the first part.
2. Party of the second part shall accept delivery of all goods so shipped on its order and shall pay all freight and carriage charges immediately upon arrival, and shall promptly insure said goods in the name of said party of the first part against damage by fire, or

water to the full insurable value thereof, and shall care for said goods pending sale thereof for party of the first part, but at the expense of said party of the second part. Said party of the second part shall hold said goods exclusively for the purpose of re-sale for the account of said party of the first part at prices not less than the net invoice price.

3. Party of the second part shall be entitled to retain, by way of commission on sales made, the surplus obtained and collected by it on the sale of specific items over and above the invoice price thereof, after such invoice price has been collected and remitted to first party.
4. Party of the second part shall keep an itemized record of all sales of such consigned goods separate and distinct from its other sales, and shall deliver to party of the first part, promptly upon the first and fifteenth of each month, a full copy thereof showing all sales of consigned goods made during the preceding one-half month, including the items sold, the selling price, terms, and name and address of the purchaser in each case, and all collections made on such sales.
5. It shall be the duty of the party of the second part to remit all monies collected by party of the second part from each purchaser until the amount due the first party thereon has been paid in full; such remittance to be on the Twentieth of each month for [108] goods sold during the preceding month. In

case party of the second part, due to its not having received from its customer payment for goods sold, shall not be able to make payment in cash, it shall give the party of the first part a demand note collateraled by the assignment of accounts receivable at least equal to the amount of payment due for merchandise sold. Party of the second part does hereby guarantee the credit of all customers and purchasers and the collection of all accounts created on the sale of such goods.

6. Party of the second part shall pay to party of the first part a carrying charge equal to seven per cent for the time after ninety days from date of shipment that merchandise remains in second party's possession unsold. Settlements for this carrying charge shall be made on the first day of January and July of each year.
7. Neither the invoicing of said consigned goods to the party of the second part, nor the charging of the same to it on the books of said party of the first part, nor the handling of such transactions, whether for convenience or otherwise, in any manner or form inconsistent herewith shall be deemed to change or discontinue this agreement or prevent said consigned goods from being held, handled and remitted for under and according to the terms hereof.
8. In case any of said goods shall at any time be recalled by said party of the first part, the said party of the second part shall crate and

place on cars at Seattle.

9. Said party of the second part now has in its possession certain goods, as per attached list, which have heretofore been sold and delivered to it by said party of the first part on credit, and which have not been paid for, and it is hereby agreed that the title to said goods, and the same is hereby transferred and conveyed back to said party of the first part, and that from and after this date the same shall be treated as having been delivered to said party of the second part on consignment and under and subject to all of the terms and conditions of this contract. In consideration of the transfer and conveyance of the title to said goods back to said party of the first part, that company does hereby cancel the indebtedness of said party of the second part for said goods.

10. This contract shall continue in force and effect until terminated by one or both of the parties hereto by written notice given to the other, but in case of such termination party of the first part shall have the right, at its option to require party of the second part to keep and pay for the consigned goods then remaining on hand at the invoiced price thereof, party of the second part to be entitled to the following terms:

Twenty-five (25%) per cent thereof every Thirty (30) days until fully paid. [109]

The consigned goods or the accounts representing the same and the proceeds thereof shall con-

tinue to belong to and be the property of said party of the first part until remittance therefor shall have been made to and received by said party of the first part as herein provided.

In the event that party of the first part shall not elect to sell said goods to party of the second part, then upon termination of the contract it shall be the duty of party of the second part to crate and place on cars at Seattle, unless otherwise directed by party of the first part.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized officers the day and year above written.

KETCHAM & ROTHSCHILD, INC.
By JERRY W. ROTHSCHILD.
RENFRO-WADENSTEIN.
By O. A. WADENSTEIN,
President. [110]

PETITIONER'S EXHIBIT No. 2.

2458169. Volume 81 Miscellaneous. Page 302.

RENFRO-WADENSTEIN,

to

KETCHAM & ROTHSCHILD, INC.,

BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS:

THAT Renfro-Wadenstein of Seattle, County of King, State of Washington, the party of the first part for and in consideration of the sum of $11,585.25 Dollars lawful money of the United States of America, to them in hand paid by Ketcham and

Rothschild, Inc., of Chicago, Ill., the party of the second part the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and deliver unto the said party of the second part, the following described personal property now located at it's place of business at 1424 5th Ave. in the Seattle, in the County of King, and State of Washington, to-wit:

X

ud. Note
to X
ttached
y rider

1#		Bench	2600	26.00
2#	611	Chairs	117.00	234.00
1#	1986	Arm Chair	186.00	186.00
1#	1986	Sofa	352.50	352.50
1#	2086	Sofa	188.50	188.50
1#	2113	Sofa	300.00	300.00
1#	2114	Chair	175.00	175.00
1#	2168	Chair	154.00	154.00
1#	2170	Wing Chair	180.00	180.00
1#	2173	Chair	266.00	266.00
1#	2175	Chair	268.00	268.00
1#	2176	Chair	247.00	247.00
1#	2182	Chair	185.00	185.00
1#	2189	Sofa	222.00	222.00
1#	2195	Sofa	263.00	263.00
1#	2213	Chair	275.00	275.00
1#	2229	Table	28.00	28.00
1#	2229	Love Seat	44.00	44.00
1#	2231	Love Seat	44.00	44.00
1#	2231	Bench	30.50	30.50
1#	2238	Sofa	383.00	383.00
1#	2238	Chair	208.00	208.00
1#	2249½	Chair	57.00	57.00

2#	2249	Sofa	63.00	127.00
1#	2251	Bench	81.00	81.00
1#	2251	Sofa	315.00	315.00
1#	2251	Arm Chair	158.00	158.00
1#	2256	Divan	142.00	142.00
1#	2260	Coffee Table	57.00	57.00
1#	2264	Chair	86.00	86.00
1#	2265	Chair	85.00	85.00
1#	2282	Foot Rest	16.00	16.00
1#	2287	Chair	120.00	120.00
1#	2310	Sofa	84.00	84.00
1#	2313	Chair	83.50	83.50
1#	2318	Sofa	303.00	303.00
[111]				
1#	2325	Love Seat	89.25	89.25
1#	2332	Sofa	372.00	372.00
1#	2334	Reading Chair	96.00	96.00
1#	2335½	Server	92.00	92.00
4#	2335	Chairs	38.00	152.00
1#	2335	Table	68.00	68.00
1#	2350	Davenport	280.00	280.00
1#	2368½	Chair	125.00	125.00
1#	2376	Sofa	314.00	314.00
1#	2377	Chair	370.00	370.00
1#	2382	Chair	68.00	68.00
1#	2394	Chair	175.00	175.00
1#	2398	Chair	122.00	122.00
1#	2398	Settee	184.50	184.50
1#	2406	Chair	60.00	60.00
2#	2407	Chair	197.50	395.00
2#	2408	Sofas	293.00	586.00
1#	2408	Sofa	229.00	229.00

1#	2411	Couch	205.00	205.00
1#	2411	Sofa	490.00	490.00
1#	2416	Sofa	251.00	251.00
1#	2419	Chair	181.00	181.00
1#	2976	Chair	110.00	110.00
1#	3107	Sofa	248.50	248.50
1#	3141	Chair	168.00	168.00
1#	3165½	Bench	46.00	46.00
1#	2349	Gr. Chair	134.00	134.00

$11,585.25

X

To have and to hold the same to the said party of the second part its heirs, executors, administrators and assigns forever. And said party of the first part for its heirs, executors, administrators, covenant and agree to and with the said party of the first part is owner of the said property, goods and chattels, and has good right and full authority to sell the same, and that they will warrant and defend the sale hereby made unto the said party of the second part, its executors, administrators and assigns, against all and every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the —— day of April, 1928.

(R. W. Corp. Seal.)

RENFRO-WADENSTEIN.

By O. A. WADENSTEIN, Pres. (Seal)

By R. R. RENFRO, Secretary. (Seal)

Signed, and delivered in the presence of

M, WHALEY. [112]

State of Washington,
County of King,—ss.

I, A. E. Barrett, Notary Public in and for the State of Washington, residing at Seattle, do hereby certify that on this 16th day of April, 1928, personally appeared before me O. A. Wadenstein and R. R. Renfro, to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes herein mentioned.

Given under my hand and official seal this 16th day of April, 1928.

(E. A. B. Notarial Seal) E. A. BARRETT,
Notary Public in and for the State of Washington,
Residing at Seattle.

(Com. Ex. Dec. 27, 1929.)

Filed for record at request of Poe, Falknor, Falknor & Emory, Apr. 24, 1928, at 25 min. past 9 A. M. George A. Grant, County Auditor. [113]

PETITIONER'S EXHIBIT No. 3.

1	2229	Bench	26.25
1	611	Chaise	117.00
1	1986	Sofa	352.50
1	1986	Arm Chr.	186.00
1	2086	Sofa	188.50
1	2113	Sofa	300.00
1	2114	Chair	175.50
1	2117	Sofa	282.00
1	2126	Sofa	295.50

1	2147	Sofa		334.00
1	2155	C. Chair		80.50
1	2168	Chair		154.50
1	2170	Wing Chair		180.00
1	2175	Sofa		616.00
1	2175	Chair		268.00
1	2176	Chair		247.00
1	2189	Sofa		222.00
1	2195	Sofa		263.50
1	2213	Chair		275.00
1	2219	Chair		148.50
1	2225	Sofa		227.50
1	2229	Table		28.00
1	2229	Love Seat		44.00
1	2231	Love Seat		44.00
1	2231	Bench		30.50
1	2238	Sofa		383.50
1	2238	Chair		208.00
1	2249½	Chair		57.00
2	2249	Sofas	63.50	127.00
1	2251	Bench		81.00
1	2251	Arm Chair		158.00
1	2256	Divan		142.00
1	2260	Coffee Table		57.00
1	2264	Chair		86.00
1	2265	Chair		85.00
1	2282	Foot Stool		16.00
1	2287	Chair		120.00
1	2300	Sofa		304.00
1	2310	Sofa		82.00
1	2313	Chair		83.50
1	2318	Sofa		303.00

1	2325	Love Seat		89.25
1	2328	Open Arm Chair		62.00
1	2332	Sofa		372.00
4	2335	Chairs	38.00	152.00
1	2335	Table		68.00
1	2335½	Server		92.00
1	2346	Sofa		320.00
1	2350	Sofa		280.50
1	2357	Side Chair		48.00
1	2376	Sofa		314.00
		Forward		9,177.00

[114]

		Brought Forward		9,177.00
1	2377	Chair		370.50
1	2382	Chair		68.00
1	2394	Chair		175.00
1	2396	Sofa		525.00
1	2396	Arm Chair		275.00
1	2398	Chair		122.50
1	2398	Settee		184.50
1	2406	Chair		60.00
2	2407	Chairs	197.50	395.00
2	2408	Sofa	293.00	586.00
1	2408	Sofa		229.50
1	2411	Sofa		490.50
1	2416	Sofa		251.50
1	2419	Chair		181.00
1	2428	Sofa		544.00
1	2428	Arm Chair		266.00
1	2428	L. Chair		192.00
1	2429	Sofa		362.50

1	2433	Chair		99.00
1	2436	Chair		158.50
1	2441	Chair		89.50
2	2443	Sofas	242.00	484.00
1	2976	Chair		110.00
1	3107	Sofa		285.00
1	3141	Chair		188.00
1	3141	Chair		168.50
1	3165½	Bench		46.00

$16,084.00

[Endorsed]: Filed this 17 day of Nov., 1928, at 11 o'clock A. M. C. L. Hawkins, Referee. [115]

[Title of Court and Cause.]

ANSWER OF TRUSTEE TO PETITION FOR RECLAMATION OF KETCHAM & ROTHSCHILD, INC.

Comes now W. S. Osborn, the duly appointed, acting and qualified Trustee of the estate of the above-named bankrupt, having succeeded and superceded S. T. Hills as assignee, and, for answer to the petition for reclamation of Ketcham & Rothschild, Inc., alleges:

I.

Answering Paragraph I and II, the Trustee admits the same.

II.

Answering Paragraph III, the Trustee denies the same.

III.

Answering Paragraph IV, the Trustee denies that the alleged agreements were executed for any consideration or were effective for any purpose.

IV.

Answering Paragraph V, the Trustee denies the same.

V.

Answering Paragraph VI, Trustee alleges that the said Hills as assignee was superceded in the charge of the assets and properties of the bankrupt on November 15, 1928, by John L. McLean, receiver, who in turn was superceded by answering Trustee and the Trustee denies each and every other allegation.

VI.

Answering Paragraphs VII–VIII, the Trustee denies the same. [116]

For further answer and by way of a further and seperate defense thereto, Trustee alleges:

I.

That the bankrupt, Renfro-Wadenstein, at all times referred to in the petition and in this answer, have been a corporation organized under the laws of the State of Washington. That the alleged consignment agreement described as Petitioner's Exhibit 1 and the alleged bill of sale described as Exhibit 2, conceding the same to have been entered into between the parties therein named, as alleged in the petition, are each of them fraudulent and

void as to this trustee and title to the property, assets and the proceeds therefrom claimed by the petitioner and referred to in said petition and the exhibits attached thereto passed to the Trustee notwithstanding for the following reasons:

(1) Neither the alleged consi*h*nment agreement (Exhibit No. 1) nor the alleged bill of sale (Exhibit No. 2) were recorded in the office of the Auditor of King County, Washington, in which the property was situated, within ten days after such alleged sale had been made, as required by Section 5827, Remington's Compiled Statutes.

(2) Said alleged sale was a mere pretense and disguise of the real transaction, which transaction was in fact an attempt between the parties to give the petitioner security on the merchandise described in said bill of sale for an antecedent indebtedness owing the petitioner from the bankrupt for the purchase price of said merchandise. That although a bill of sale in form, Exhibit 2 was in truth and in law a chattel mortgage and therefore fraudulent and vo*u*d as against this Trustee because it was not executed and filed in the office of the County Auditor of King County wherein the mortgaged property was situated, as required by Sections 3780–3781–3782, Remington's Compiled Statutes. [117]

(3) That at the time of the execution of said instrument and at all times thereafter, Renfro-Wadenstein, vendor therein, was insolvent, both within the provisions of the Bankruptcy Act and within the Washington state rule of insolvency,

with the full knowledge of petitioner, and the purpose and effect thereof was to create a preference in favor of the said petitioner and the same and each of them are therefore invalid as to this Trustee.

(4) The alleged consignment aggreement was a mere masquerade in writing under which it was intended in fact between the parties that petitioner should sell and deliver merchandise to the bankrupt and retain a lien thereon so as to secure the price without making a public record of the transaction and the bankrupt and petitioner endeavored thereby under the pretense of a consignment that the bankrupt should buy and pay for all of said merchandise, but that if the purchaser became insolvent or bankrupt a claim might be advanced that the transaction entitled the petitioner to a lien thereon or the retention of title thereto.

(5) That both by the face of said contracts and by the conduct of the parties thereunder the transaction was in fact a sale with clauses therein attempting to constitute the same as a conditional sale and therefore a fraud upon the creditors of the vendee therein named, and as a conditional sale the same is invalid as to this Trustee because it was not executed and filed in the Auditor's office of King County, State of Washington, in the manner and within the time required by Sections 3790–3791 of Remington's Compiled Statutes, State of Washington.

WHEREFORE, having fully answered, the Trustee demands judgment dismissing the petition of the claimant herein costs. [118]

LEOPOLD M. STEN,
BAUSMAN, OLDHAM & EGGERMAN,
Attorneys for Trustee.

Office and P. O. Address:
1408–1418 Hoge Bldg.,
Seattle, King County,
Washington.

State of Washington,
County of King,—ss.

W. S. Osborn, being first duly sworn, on his oath deposes and says; That he is the Trustee above named; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

W. S. OSBORN.

Subscribed and sworn to before me this 5 day of December, 1928.

LOUIS J. LYON,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed this 9 day of Jan., 1929, at 2 o'clock P. M. [119]

[Title of Court and Cause.]

REPLY OF KETCHAM & ROTHSCHILD, INC., TO ANSWER OF TRUSTEE.

Comes now Ketcham & Rothschild, Inc., petitioner

herein, and replying to the affirmative matter contained in the answer of the Trustee to the petition of reclamation of Ketcham & Rothschild, Inc., admits and denies as follows:

I.

Admits that the bankrupt, Renfro-Wadenstein, at all times referred to in the petition and in said Trustee's answer was a corporation organized under the laws of the State of Washington, but denies each and every other allegation in said further answer and further and separate defense contained.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Ketcham & Rothschild, Inc., Petitioner.
Office & P. O. Address:
977 Dexter Horton Bldg.,
Seattle, Washington.

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe Emory, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for Ketcham & Rothschild, Inc., petitioner herein, and as such makes this verification for and on behalf of said petitioning corporation for the reason that none of the officers of said corporation are within the District and Division aforesaid; that he has read the foregoing reply, knows the contents thereof, and believes the same to be true.

DeWOLFE EMORY. [120]

Subscribed and sworn to before me this 15th day of December, 1928.

[Notarial Seal]

JUDSON F. FALKNOR,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed this 19 day of Dec., 1928, at 2 P. M. o'clock. [121]

[Title of Court and Cause.]

ORDER OF REFEREE DENYING PETITION IN RECLAMATION OF ROBERT W. IRWIN COMPANY.

In re: ROBERT W. IRWIN, Petitioner In Reclamation.

This cause having heretofore come on for trial, the petitioner in reclamation being represented by its attorneys, Poe, Falknor, Falknor & Emory, and the Trustee in Bankruptcy by D. G. Eggerman and Leopold M. Stern, and the respective parties having introduced their evidence, and the matter having been fully argued and the cause taken under advisement, and the undersigned Referee in Bankruptcy having heretofore made and filed his memorandum decision,—

IT IS ORDERED, CONSIDERED AND ADJUDGED: That the bill of sale to petitioner was executed and delivered at a time when the bankrupt was insolvent and constituted a preference and is invalid.

IT IS FURTHER ORDERED that the contract denominated a consignment contract was and is in fact and in law a contract of sale; and

THEREFORE the petition in reclamation of petitioner Robert W. Irwin is denied.

To all of which petitioner excepts and its exception is allowed.

Dated this 2d day of May, 1930.

BEN L. MOORE,
Referee in Bankruptcy.

OK. as to form.

POE, FALKNOR, FALKNOR & EMORY,
For Petitioner.

[Endorsed]: Filed this 2d day of May, 1930, at 4 o'clock P. M. [122]

[Title of Court and Cause.]

ORDER OF REFEREE DENYING PETITION IN RECLAMATION OF ROTHSCHILD & KETCHAM, INCORPORATED.

In re: KETCHAM & ROTHSCHILD, Petitioners in Reclamation.

This cause having heretofore come on for trial, the petitioner in reclamation being represented by its attorneys, Poe, Falknor, Falknor & Emory, and the Trustee in Bankruptcy by D. G. Eggerman and Leopold M. Stern, and the respective parties having introduced their evidence, and the matter having been fully argued and the cause taken under advisement, and the undersigned Referee in Bank-

ruptcy having heretofore made and filed his memorandum decision,—

IT IS ORDERED, CONSIDERED AND ADJUDGED: That the bill of sale to petitioner was executed and delivered at a time when the bankrupt was insolvent and constituted *and constituted* a preference and is invalid.

IT IS FURTHER ORDERED that the contract denominated a consignment contract was and is in fact and in law a contract of sale; and

THEREFORE the petitio*ner* in reclamation of petitioner Ketcham & Rothschild is denied.

To all of which petitioner excepts and its exception is allowed.

Dated this 2d day of May, 1930.

BEN L. MOORE,
Referee in Bankruptcy.

OK. as to form.

POE, FALKNOR, FALKNOR & EMORY,
For Petitioner.

[Endorsed]: Filed this 2 day of May, 1930, at 4 o'clock P. M. [123]

[Title of Court and Cause.]

EXCEPTIONS OF ROBERT W. IRWIN COMPANY TO FINDINGS OF REFEREE.

Comes now Robert W. Irwin Company, a corporation, petitioner in reclamation herein, and excepts to the following findings of the Referee upon which is based the Referee's order of April 30th,

1930, denying the petition in reclamation of said Robert W. Irwin Company:

I.

Excepts to said Referee's finding that the bill of sale to Robert W. Irwin Company was executed and delivered at a time when the bankrupt was insolvent, and constituted a preference, and is invalid, upon the ground and for the reason that said finding and the Referee's conclusion of law based thereon are not supported by the testimony introduced in this case, nor by the applicable law.

II.

Excepts to said Referee's finding that the consignment contract herein involved was intended by the parties thereto to be a contract of sale, and was and is in fact and in law a contract of sale, upon the ground and for the reason that said finding and the conclusion of law based thereon are not supported by the testimony in this case, nor by the applicable law.

Dated at Seattle, Washington, this 2d day of May, 1930.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Robert W. Irwin Company.

Copy received 5–2–30.

D. G. EGGERMAN and
LEOPOLD STERN,
Attys. for Trustee.

[Endorsed]: Filed this 2 day of May, 1930, at 4 o'clock P. M. [124]

[Title of Court and Cause.]

EXCEPTIONS OF KETCHAM & ROTHSCHILD TO FINDINGS OF REFEREE.

Comes now Ketcham & Rothschild, Inc., and excepts to the following findings of the Referee herein, upon which are based the Referee's order of April 30th, 1930, denying the petition in reclamation of Ketcham & Rothschild, Inc.:

I.

Excepts to said Referee's finding that the bill of sale was delivered to Ketcham & Rothschild, Inc., and executed by the bankrupt at a time when the bankrupt was insolvent, and constituted a preference, and was therefore invalid, upon the ground and for the reason that said finding and the conclusion of law based thereon are not supported by the testimony introduced in this case, or by the applicable law.

II.

Excepts to said Referee's finding that the consignment contract herein involved was intended by the parties thereto to be a contract of sale, and was in fact and in law a contract of sale, on the ground and for the reason that said finding and the conclusion of law based thereon are not supported by the testimony in this case, and are contrary to the applicable law.

Dated at Seattle, Washington, this 2d day of May, 1930.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Ketcham & Rothschild, Inc.

Copy received 5–2–30.

D. G. EGGERMAN and
LEOPOLD M. STERN,
Attorneys for Trustee.

[Endorsed]: Filed this 2 day of May, 1930, at 4 o'clock P. M. [125]

[Title of Court and Cause.]

PETITION OF ROBERT W. IRWIN COMPANY FOR REVIEW OF REFEREE'S ORDER.

To Ben L. Moore, Esquire, Referee in Bankruptcy.

Your petitioner respectfully shows:

I.

That heretofore and on or about the 17th day of November, 1928, your petitioner, Robert W. Irwin Company, a corporation, filed in this matter its petition for reclamation, praying for the return to it in kind of certain furniture and merchandise, as more particularly set forth in the exhibits attached to said petition, and for the return to it of certain accounts receivable, representing merchandise and furniture sold by the above-named bankrupt, Renfro-Wadenstein, a corporation, or S. T. Hills, as assignee of said corporation, and for the return to it of certain moneys alleged to be in the hands of said Renfro-

Wadenstein, a corporation, or of the said assignee, and representing the proceeds of the sale of certain goods and merchandise, all as more particularly appears from the exhibits attached to said petition, said petition being based upon certain rights given petitioner by virtue of a certain memorandum of agreement, dated April 1st, 1928, and executed by your petitioner, Robert W. Irwin Company, a corporation, and the above-named bankrupt, a true copy [126] of which said agreement is attached to the petition in reclamation herein.

II.

That thereafter the Trustee of the estate of the above-named bankrupt filed an answer to said petition, putting at issue the material allegations thereof, and that thereafter testimony was taken upon the issues as framed by said pleadings before Cicero R. Hawkins, Esquire, Referee in Bankruptcy, and that after the completion of said testimony and after said petition had been argued before said Referee and briefs submitted to him in support of and resisting the same, the said Referee died. That thereafter the matter was submitted to Ben L. Moore, Esquire, as Referee, upon the testimony theretofore introduced, upon the briefs, and upon additional argument of counsel, and that thereafter and on, to wit, the —— day of ————, 1930, an order, a copy of which is hereto annexed, was made and entered herein upon said petition for reclamation, by the said Ben L. Moore, Esquire, as Referee.

III.

That said order was and is erroneous in the following respects:

1. That said Referee erred in ordering and adjudging that the petition in reclamation of Robert W. Irwin Company be denied and disallowed.

2. That said Referee erred in ordering and adjudging that the consignment contract, attached to the petition in reclamation, was and is in effect and in law a contract of sale. [127]

3. That said Referee erred in ordering and adjudging that the bill of sale attached to the petition in reclamation was executed and delivered at a time when the bankrupt was insolvent and constituted a preference and is invalid.

4. That said Referee erred in ordering and adjudging that the consignment contract involved was not a valid contract of consignment and that the relationship of bailor and bailee did not exist between petitioner and bankrupt.

5. That said Referee erred in failing to find that said bankrupt was solvent at the time of executing said consignment contract and at the time of executing said bill of sale.

6. That said Referee erred in failing to adjudge and find that the execution of said bill of sale attached to said petition in reclamation was not a preference but was executed for a present valid consideration.

7. That said Referee erred in failing to adjudge and order that with respect to the furniture and

merchandise contained in the bill of sale attached to the petition in reclamation there was a sufficient change in possession thereof from the bankrupt as vendor to the bankrupt as consignee and bailee for petitioner to remove the case from Remington's Compiled Statutes, Section 5827.

8. That the Referee erred in failing to order and adjudge petitioner to be entitled to the immediate possession of all accounts receivable in the hands of the Trustee which were unpaid by customers of the bankrupt, said accounts receivable representing furniture sold by bankrupt and by S. T. Hills, as assignee, said furniture being covered both by said bill of sale and by said consignment agreement. [128]

9. That the Referee erred in failing to order and adjudge that petitioner was entitled to the immediate possession of certain sums of money collected by bankrupt and by S. T. Hills, as assignee, said moneys being collections on accounts representing furniture sold, said furniture being covered both by said bill of sale and by said consignment agreement.

10. That said Referee erred in adjudging and finding that the Trustee was an existing creditor, or innocent purchaser, and as such entitled to the benefits of Remington's Compiled Statutes, Section 5827.

WHEREFORE, your petitioner, feeling aggrieved because of such order, prays that the same

may be reviewed as provided by the bankruptcy law and General Order XXVII.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner, Robert W. Irwin Company, a Corporation.
Office & P. O. Address,
977 Dexter Horton Bldg.,
Seattle, Washington. [129]

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe Emory, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for Robert W. Irwin Company, a corporation, petitioner herein; that he makes this verification for and on behalf of said petitioner for the reason that none of the officers or agents of said petitioner are now within, or reside within, King County, Washington; that he has read the above and foregoing petition for review of Referee's order, knows the contents thereof and believes the same to be true.

DeWOLFE EMORY.

Subscribed and sworn to before me this 2d day of May, 1930.

[Notarial Seal] DRAYTON F. HOWE,
Notary Public in and for the State of Washington, Residing at Seattle.

Copy received 5–2–30

D. S. EGGERMAN and
LEOPOLD M. STERN,
Attorneys for Trustee.

[Endorsed]: Filed this 3 day of May, 1930, at 11 o'clock A. M. [130]

[Title of Court and Cause.]

ORDER DENYING PETITION IN RECLAMATION OF ROBERT W. IRWIN, ETC.

In re: Robert W. Irwin, Petitioner in Reclamation.

This cause having heretofore come on for trial, the petitioner in reclamation being represented by its attorneys, Poe, Falknor, Falknor & Emory, and the Trustee in Bankruptcy by D. G. Eggerman and Leopold M. Stern, and the respective parties having introduced their evidence and the matter having been fully argued and the cause taken under advisement, and the undersigned Referee in Bankruptcy having heretofore made and filed his memorandum decision,—

IT IS ORDERED, CONSIDERED AND ADJUDGED: That the bill of sale to petitioner was executed and delivered at a time when the bankrupt was insolvent and constituted a preference and is invalid.

IT IS FURTHER ORDERED that the contract denominated a consignment contract was and is in fact and in law a contract of sale; and

THEREFORE the petitio*ner* in reclamation of petitioner Robert W. Irwin is denied.

To all of which petitioner excepts and its exception is allowed.

Dated this 2d day of May, 1930.

BEN L. MOORE,
Referee in Bankruptcy. [131]

[Title of Court and Cause.]

PETITION OF KETCHAM & ROTHSCHILD COMPANY FOR REVIEW OF REFEREE'S ORDER.

To Ben L. Moore, Esquire, Referee in Bankruptcy.

Your petitioner respectfully shows:

I.

That your petitioner, on or about the 17th day of November, 1928, filed in this matter a petition in reclamation, praying for the return to it in kind of certain furniture and merchandise, more particularly described in the exhibits attached to said petition, and for the return to it of certain accounts receivable, representing merchandise and furniture sold, all as more particularly shown in said exhibits, and for the return to it of certain moneys representing the proceeds of the sale of certain goods and merchandise and furniture, all as more particularly set forth in said petition, said petition being based upon certain rights given your petitioner under and by virtue of a certain memorandum of agreement entered into on the 30th day of March, 1928, by and between petitioner and the above-named bankrupt, a copy of which said agreement is attached to the petition in reclamation herein. [132]

II.

That thereafter the Trustee of the estate of the above-named bankrupt filed an answer to said petition, putting at issue the material allegations thereof, and that thereafter testimony was taken upon the issues as framed by said pleadings before Cicero R. Hawkins, Esquire, Referee in Bankruptcy, and that after the completion of said testimony and after said petition had been argued before said Referee and briefs submitted to him in support of and resisting the same, the said Referee died. That thereafter the matter was submitted to Ben L. Moore, Esquire, as Referee, upon the testimony theretofore introduced, upon the briefs, and upon additional argument of counsel, and that thereafter and on, to wit, the —— day of ————, 1930, an order, a copy of which is hereto annexed, was made and entered herein upon said petition for reclamation, by the said Ben L. Moore, Esquire, as Referee.

III.

That such order was and is erroneous in the following respects:

1. That said Referee erred in ordering and adjudging that the petition in reclamation of Ketcham & Rothschild, a corporation, be denied and disallowed.

2. That said Referee erred in adjudging and ordering that the bill of sale to petitioner was executed and delivered to petitioner at a time when bankrupt was insolvent and constituted a preference and is invalid.

3. That said Referee erred in adjudging and finding that said bankrupt was at any time insolvent.

4. That said Referee erred in failing to find and adjudge that said bill of sale was executed for a present and valid consideration and as such did not constitute a preference. [133]

5. That said Referee erred in failing to find and adjudge that the consignment agreement attached to the petition herein was a valid consignment agreement, creating the relationship of bailor and bailee between petitioner and bankrupt, and in finding that said contract was one of sale.

6. That said Referee erred in finding and adjudging that petitioner was not entitled to the immediate possession of the accounts receivable, representing furniture sold both by bankrupt and by S. T. Hills, as assignee, which said furniture was covered both by the consignment agreement and the bill of sale attached to the petition herein.

7. That said Referee erred in failing to adjudge and find that petitioner was entitled to immediate possession of certain cash moneys in the proceeds of the sale of certain furniture sold by bankrupt and by S. T. Hills, as assignee, which said furniture was covered by the consignment agreement and the bill of sale attached to said petition herein, which said moneys were in the possession of the Trustee at the time of filing of the petition in reclamation.

8. That said Referee erred in adjudging and finding that the Trustee was an existing creditor, or innocent purchaser, and as such entitled to the

benefits of Remington's Compiled Statutes, Section 5827.

WHEREFORE, your petitioner, feeling aggrieved because of such order, prays that the same may be reviewed as provided by the bankruptcy law and General Order XXVII.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner, Ketcham & Rothschild Company, a Corporation.
Office & P. O. Address:
977 Dexter Horton Bldg.,
Seattle, Washington. [134]

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe Emory, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for Ketcham & Rothschild Company, a corporation, petitioner herein; that he makes this verification for and on behalf of said petitioner for the reason that none of the officers or agents of said petitioner are now within, or reside within, King County, Washington; that he has read the above and foregoing petition for review of Referee's order, knows the contents thereof and believes the same to be true.

DeWOLFE EMORY.

Subscribed and sworn to before me this 2d day of May, 1930.

[Notarial Seal DRAYTON F. HOWE,
Notary Public in and for the State of Washington, Residing at Seattle.

Copy received 5–2–30.

D. G. EGGERMAN and
LEOPOLD M. STERN,
Attorneys for Trustee.

[Endorsed]: Filed this 3 day of May, 1930, at 11 o'clock A. M. [135]

[Title of Court and Cause.]

ORDER DENYING PETITION IN RECLAMATION OF KETCHAM & ROTHSCHILD.

In re: Ketcham & Rothschild, Petitioner in Reclamation.

This cause having heretofore come on for trial, the petitioner in reclamation being represented by its attorneys, Poe, Falknor, Falknor & Emory, and the Trustee in Bankruptcy by D. G. Eggerman and Leopold M. Stern, and the respective parties having introduced their evidence, and the matter having been fully argued and the cause taken under advisement, and the undersigned Referee in Bankruptcy having heretofore filed his memorandum decision,—

IT IS ORDERED, CONSIDERED AND ADJUDGED: That the bill of sale to petitioner was executed and delivered at a time when the bankrupt was insolvent and constituted a preference and is invalid.

IT IS FURTHER ORDERED that the contract denominated a consignment contract was and is in fact and in law a contract of sale; and

Therefore the petition in reclamation of petitioner Ketcham & Rothschild is denied.

To all of which petitioner excepts and its exception is allowed.

Dated this 2d day of May, 1930.

BEN L. MOORE,
Referee in Bankruptcy. [136]

[Title of Court and Cause.]

STIPULATION RE PETITIONS FOR RECLAMATION, ETC.

This stipulation made and entered into at Seattle, Washington, on this 7th day of August, 1929, by and between Walter S. Osborn, Trustee of the Estate of the above-named bankrupt, and his attorneys, Messrs. Bausman, Oldham & Eggerman, and Leopold M. Stern and Ketcham & Rothschild, Inc., and Robert W. Irwin Company, petitioners herein, through the undersigned, their attorneys, Poe, Falknor, Falknor & Emory,—

WITNESSETH, that whereas, the above-named petitioners Ketcham & Rothschild, Inc., a corporation, and Robert W. Irwin Company, a corporation have heretofore filed herein their petitions for the reclamation of certain properties all as more particularly appears from the respective petitions of said petitioners on file herein;

AND WHEREAS, in answer to said petitions, the above-named Trustee in Bankruptcy did thereafter file his separate answer to said petitions all

as more particularly appears from said answers on file herein;

AND WHEREAS, the affirmative matter contained in the answer of said Trustee was put at issue and controverted by replies filed herein by said petitioners, all as more particularly appears therefrom;

AND WHEREAS, thereafter and on or about the 10th day of January, 1929, and at subsequent and divers times thereafter, the petitions for reclamation of said petitioners were heard upon the issues so framed and testimony introduced in support thereof before and by the Honorable C. R. Hawkins, Referee in Bankruptcy at Seattle, King County, Washington, the said C. R. Hawkins, as said Referee, having been heretofore duly empowered to hear and try said issues and the said petitioners after having presented their testimony in support of their said petitions, having rested and the said Trustee thereafter having introduced testimony in support of his answers and having rested [137] and thereafter the said petitioners having introduced testimony in rebuttal to the testimony so offered by said Trustee, and thereafter the matter having been argued by counsel for the respective parties to said Referee and briefs having been submitted to said Referee, and thereafter the matter having been submitted to said Referee for his decision upon said oral arguments and upon said briefs of the respective parties hereto, and thereafter the said Honorable C. R. Hawkins, as said Referee having, prior to the rendition of a decision

by him upon said two petitions for reclamation, died, and thereafter the Honorable Ben L. Moore having been duly appointed to act in the place and stead of the said C. R. Hawkins as said Referee;

AND WHEREAS, the respective parties hereto are desirous of submitting the matters and issues so raised by the aforesaid pleadings to the said Ben L. Moore, as said Referee, for his decision, upon the pleadings, testimony, depositions, stipulations, exhibits and evidence introduced at the trial and hearing upon the said petitions before the said C. R. Hawkins, as said Referee,—

NOW, THEREFORE, it is hereby agreed and stipulated by and between the respective parties hereto as follows:

I.

The petitions for reclamation of Ketcham & Rothschild, Inc., a corporation, and Robert W. Irwin Company, a corporation together with the issues raised by said petitions, answers controverting the same and replies controverting the affirmative matter contained in said answers, shall be submitted forthwith to the Honorable Ben L. Moore, as Referee in Bankruptcy, sitting at Seattle, Washington, in the aforesaid division and district, upon the evidence in its entirety heretofore submitted on the issues so raised to the Honorable C. R. Hawkins, Referee in Bankruptcy, now deceased, including the testimony, depositions, stipulations, exhibits and all other evidence submitted by any of the parties hereto at any of the [138] hearings before the said Honorable C. R. Hawkins, as said Referee,

subject, however, to any and all objections raised or made by the respective parties hereto and each of them to evidence offered and introduced at said hearings and subject to the rulings of the said C. R. Hawkins, as said Referee, upon the admissibility of said evidence,

II.

It is further stipulated and agreed that by this submission of said petitions and the evidence in support thereof and controverting the same as aforesaid to the Honorable Ben L. Moore, as said Referee, for his findings and decision, it is the intention of the respective parties hereto and they do hereby agree that the findings and decision of the said Ben L. Moore, as said Referee, upon said issues and upon said evidence shall be as binding and have the same force and effect as if the same had been made by the Honorable C. R. Hawkins as said Referee.

III.

It is further agreed and stipulated that when the Honorable Ben L. Moore, as said Referee, has perused the record and testimony and evidence so submitted to him as aforesaid and the briefs heretofore filed by the respective parties hereto, the parties hereto may have, should said Referee so desire, two hours aside to orally argue the matters so submitted prior to the final decision thereof by said Referee.

IV.

The record upon which the aforesaid petitions and issues are to be submitted to said Referee is to be handed to said Referee contemporaneously

with the filing of this stipulation. The names of the witness testifying for the respective parties hereto, and upon whose testimony the above matters are submitted, as as follows;

For Petitioners: Emil Rothschild, Robert W. Irwin, O. A Wadenstein, Herbert E. Smith, Truman B. Morgan, S. T. Hills, William Edris. [139]

For Trustee: William Edris, C. H. Bailey, William Hoffman.

Insufficient time having been allowed counsel for the respective parties hereto to throughly examine the record herewith submitted, as aforesaid, it is agreed and stipulated between the undersigned that either of the parties hereto may, prior to the decision of said Referee upon the matters so submitted, on motion therefor amend or correct said record and testiiony in any and all respects in which the same may, upon further examination, be shown to be incorrect.

IN WITNESS WHEREOF, we have hereunto set our hands on the day and year first above written, at Seattle, Washington.

W. S. OSBORN,
Trustee.
L. M. STERN,
BAUSMAN OLDHAM & EGGERMAN,
Attorneys for Trustee.
KETCHAM & ROTHSCHILD, INC.
By POE, FALKNOR, FALKNOR & EMORY,
Its Attorneys.
ROBERT W. IRWIN COMPANY.
By POE, FALKNOR, FALKNOR & EMORY,
Its Attorneys.

[Endorsed]: Filed this 8 day of Aug., 1929, at 2 o'clock P. M. [140]

[Title of Court and Cause.]

STIPULATION RE DEPOSITION OF ROBERT W. IRWIN.

IT IS HEREBY STIPULATED by and between the Trustee for the above-named bankrupt, through the undersigned his attorneys, and Robert W. Irwin Company, one of the petitioners herein, through the undersigned its attorneys, that the deposition of Robert W. Irwin, as a witness on behalf of Robert W. Irwin Company, one of the petitioners herein, may be taken upon oral interrogatories before Chris Hindelink, a notary public, at his offices at 602 Michigan Trust Building, Grand Rapids, Michigan, on the 27th day of December, 1928, or as soon thereafter as the attorneys representing said Trustee and said petitioner at the taking of said deposition may agree upon, provided, however, that said deposition is taken sufficient time before the 19th day of January, 1929, to enable said deposition to be transmitted to and received by the Referee in Bankruptcy at Seattle, Washington, by January, 7, 1929.

The parties hereto expressly waive the issuance of a commission herein, or any order of the District Court or Referee directing the taking of said deposition, or any formality with reference to the taking thereof. Any objection to any question pro-

pounded or answer thereto, save as to the form of a question, may be first made at the trial before the Referee.

After the witness has signed said deposition, it may, with the usual certificate and this stipulation attached, be forwarded to Judge C. R. Hawkins, Referee in Bankruptcy, L. C. Smith Building, Seattle.

Dated at Seattle, Washington, this 14 day of December, 1929.

BAUSMAN, OLDHAM & EGGERMAN,
Attorneys for Trustee in Bankruptcy.
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Robert W. Irwin Company.

[Endorsed]: Filed this 8 day of Jan., 1929, at 10 A. M. [141]

[Title of Court and Cause.]

STIPULATION AS TO MERCHANDISE AND ACCOUNTS RECEIVABLE AND PROCEEDS THEREOF CLAIMED BY KETCHAM & ROTHSCHILD, INC., AND ROBERT W. IRWIN COMPANY.

W. S. Osborn, as Trustee in Bankruptcy, and Ketcham & Rothschild, Inc., and Robert W. Irwin Company, claimants, agree:

1. The merchandise in the possession of the Trustee and claimed by the claimants as their own property is of the invoice value of $31,119.35, as nearly as the parties hereto can at this time estimate.

2. It appearing that such merchandise is included in the properties sought to be purchased by Robert Grass in his bid dated November 30, 1928, such merchandise may be sold by the Trustee to Robert Grass free of any and all right, title, interest and adverse claim in favor of claimants, and each of them.

3. The sum of $21,783.55 out of the purchase price paid by Robert Grass shall stand in lieu of the merchandise claimed by claimants and shall be impressed with every right, title, interest and claim which the claimants had at the date of bankruptcy, and now have, in and to the merchandise itself, and nothing herein contained shall in any respect or at all affect or impair claimants' right, title, interest and claim, the purpose of this stipulation being to permit the merchandise to be sold for the $21,783.55 above [142] mentioned, and the $21,-783.55 to be substituted therefor.

4. The accounts receivable in the hands of the Trustee unpaid by the customers of the above-named bankrupt, Renfro-Wadenstein, a corporation, and claimed by the said Ketcham & Rothschild, Inc., and Robert W. Irwin Company, is of the value, as nearly as the parties hereto can estimate, of $7,005.00, based on the invoice price of the furniture so sold; and the moneys collected by S. T. Hills, as assignee, both on accounts receivable, originating prior to the time of his appointment as assignee, and on accounts receivable representing furniture so sold by said assignee, is, as nearly as the parties hereto can estimate, the sum of

$2,869.05; said properties are included in those sought to be purchased by Robert Grass in his bid dated November 30, 1928, and are also claimed by Ketcham & Rothschild, Inc., and Robert W. Irwin Company.

5. The sum of $9,874.05, out of the purchase price paid by Robert Grass, shall stand in lieu of the unpaid accounts receivable and proceeds of other accounts receivable claimed to have been collected by S. T. Hills, as assignee, in lieu of the accounts receivable and collections on other accounts receivable claimed by the said Ketcham & Rothschild, Ins., and Robert W. Irwin Company and shall be impressed with every right, title, interest and claim which claimants had at the date of bankruptcy and now have in and to said accounts receivable and proceeds of the collections of accounts receivable, and nothing herein contained shall in any respect or at all affect or impair claimants' right, title, interest and claim therein, the purpose of this stipulation being to permit said unpaid accounts receivable and the proceeds of certain accounts receivable collected by S. T. Hills, [143] as assignee, to be sold for the sum of $9,874.05, hereinabove mentioned, and that said $9,874.05 be substituted in lieu thereof. The figures used herein in so far as they represent values of merchandise, accounts receivable and collections made on accounts receivable are estimates merely and subject to revision by either party hereto at the trial on the petitions for reclamation.

Dated at Seattle, Washington, this —— day of December, 1928.

W. S. OSBORN,
Trustee in Bankruptcy.
KETCHAM & ROTHSCHILD, INC.,
By POE, FALKNOR, FALKNOR & EMORY,
Its Attorneys, Hereto Authorized,
ROBERT W. IRWIN COMPANY,
By POE, FALKNOR, FALKNOR & EMORY,
Its Attorneys, Hereto Authorized,
Claimants.

[Endorsed]: Filed this 5 day of Dec., 1928, at 2 o'clock P. M. [144]

[Title of Court and Cause.]

ORDER DIRECTING SALE TO ROBERT GRASS CONFORMABLY TO HIS WRITTEN BID.

W. S. Osborn, as Trustee, having filed his verified petition reciting that Robert Grass has made written bid dated November 30, 1928, in the sum of $150,000.00, for properties of the estate in bankruptcy in the bid and hereinafter particularly described, the original bid being on file and a copy being annexed to the Trustee's petition; and creditors, whose provable claims amount to at least 80% (in number and amount) of the total claims allowed and to be allowed herein, having, by writing annexed to the Trustee's petition, waived notice of sale and consented and requested that the bid

be accepted and sale made to the bidder according to the terms of the bid; and it appearing that the bid is the highest and best bid that has been or can be obtained, and that the sale as provided for in the bid is advantageous to the estate and should be made; and it further appearing that Robert W. Irwin Company and Ketcham & Rothschild, Inc., have filed herein their petitions praying for the reclamation of certain furniture manufactured by them and claimed by them to have been shipped the above-named bankrupt upon consignment, and that the Trustee now has in his possession furniture and merchandise claimed by the aforesaid concerns, the invoice value of which is approximately $31,119.35; and it further appearing to the court that the said Robert W. Irwin Company [145] and Ketcham & Rothschild, Inc., are, in addition to the above-named furniture and merchandise, also seeking the reclamation of all accounts receivable representing merchandise and furniture claimed to be owned by said concerns and sold by the above-named bankrupt or one S. T. Hills, as assignee, said accounts receivable being those claimed by the said Robert W. Irwin Company and Ketcham & Rothschild, Inc., to have been unpaid by the purchasers of said furniture and amounting in all to about $7,005.00, based on the invoice price of said furniture, and that said concerns are also seeking the return to them of certain moneys collected by the said S. T. Hills, as assignee, representing the proceeds of the sale of the furniture and merchandise claimed to be owned by the said concerns, for

which no accounting has been made to them, said collections amounting to about $2,869.05; and that in so far as the furniture and merchandise now in the hands of the Trustee of the above-named bankrupt is concerned, the said Robert W. Irwin Company and Ketcham & Rothschild, Inc., are willing that the same be included in the properties to be sold the said Robert Grass under his aforesaid bid, provided that 70% of the invoice price of said furniture and merchandise, to wit, 70% of $31,119.35, or the sum of $21,783.55, be taken by the Trustee out of the proceeds of the sale of said assets and held separate and apart therefrom, intact until such time as the petitions for reclamation of the said Robert W. Irwin Company and Ketcham & Rothschild, Inc., are finally decided, and to abide the outcome of said final decisions; and that in so far as the sale to the said Robert Grass of the accounts receivable, claimed to represent furniture owned by the said concerns and sold by the said bankrupt and by said Trustee, and the aforesaid moneys collected by said [146] Trustee on other accounts receivable is concerned, the said Robert W. Irwin Company and Ketcham & Rothschild, Inc., are willing that the same be included in the assets of the said bankrupt to be sold the said Robert Grass under his aforesaid bid, provided that, in addition to the aforesaid sum of $21,783.55, the sum of $9,874.05 be taken by the Trustee out of the proceeds of the sale of said assets and held separate and apart therefrom, intact until such time as the petitions for reclamation of

the said Robert W. Irwin Company and Ketcham & Rothschild, Inc., are finally decided, and to abide the final outcome of said decisions,

IT IS, THEREFORE, ORDERED:

1. That the bid of Robert Grass, as set out in writing dated November 30, 1928, signed by him and on file, be, and it is, hereby accepted and sale made to him accordingly.

2. That on receipt of the purchase price, the Trustee complete the sale by delivery of the properties bid for, free of all adverse claims and all incumbrances, including taxes for the year 1928, but excluding any adverse claims and incumbrances in favor of Winn & Russell, Inc., and in favor of the General Discount & Mortgage Corporation and/or Seattle Discount Corporation; and that the Trustee execute and deliver, if required, proper instrument or instruments of transfer accordingly.

3. The properties hereby sold are particularly described as follows:

(a) All properties listed in the Trustee's inventory, dated November 22, 1928, except approximately $900.00 worth of merchandise sold to Mr. Dinkelspeil.

(b) All notes, bills, accounts and contracts receivable, including those made by S. T. Hills as trustee and including any collections made by S. T. Hills as trustee on accounts assigned to General [147] Discount & Mortgage Corporation and/or Seattle Discount Corpora-

tion, but excluding the claims of the bankrupt corporations or either of them and the estate in bankruptcy against R. R. Renfro, Mrs. Teresa Wadenstein and O. A. Wadenstein and also excluding any right, title and interest the bankrupt corporations, or either of them, and the estate in bankruptcy may have in or to accounts assigned to Sunnyside Finance Co., except in case it shall appear that any account or accounts shall have been assigned to the General Discount & Mortgage Corporation and/or Seattle Discount Corporation, and also to the Sunnyside Finance Co., and in case the Trustee shall recover therefor as against the Sunnyside Finance Co. said recovery shall be for the benefit of General Discount & Mortgage Corporation and/or Seattle Discount Corporation as their interests shall respectively appear.

(c) The goodwill of each corporation.

(d) The right to use the corporate name of each corporation.

4. That W. S. Osborn, Trustee of the above-named bankrupts, be and he is hereby ordered and directed upon receipt by him of the said sum of $150,000.00 to set apart and reserve from said sum the sum of $21,783.55, being 70% of the invoice price of the furniture and merchandise now in his hands as said Trustee, claimed to be owned by Robert W. Irwin Company and Ketcham Rothschild, Inc., and to keep said fund intact until a

final disposition of each of the petitions for reclamation for said concerns and to abide the outcome thereof; and that the Trustee of said bankrupt be and he is hereby further ordered and directed upon the receipt by him of the said sum of $150,000.00, in addition to said sum of $21,783.55, to further reserve and set aside from the proceeds of the sale of said assets the sum of $9,874.05, being the estimated value of the unpaid accounts receivable, representing furniture and merchandise claimed to be owned by the said Robert W. Irwin Company and Ketcham & Rothschild, Inc., and the moneys collected by the said [148] S. T. Hills, as assignee, both on accounts receivable originating prior to the time of his appointment as assignee and on accounts receivable representing goods sold by said assignee, and to keep said sum intact until final disposition of each of the petitions for reclamation of said concerns, and to abide the outcome thereof.

Dated at Seattle, Washington, this 5 day of December, 1928.

C. R. HAWKINS,
Referee.

[Endorsed]: Filed this 5 day of Dec., 1928, at 2 o'clock P. M. [149]

[Title of Court and Cause.]

REFEREE'S MEMORANDUM DECISION.

This is a reclamation proceeding, initiated by the petition of Robert W. Irwin Company and the

petition of Ketcham & Rothschild Company, in which the petitioners, claiming that the bankrupts as consignees had received from petitioners as consignors certain merchandise, seek to recover from the trustee in bankruptcy, (1) certain merchandise in the possession of the Trustee, (2) certain accounts receivable (and the proceeds thereof) in the hands of the Trustee representing sales made by the bankrupts prior to bankruptcy of certain furniture alleged to belong to petitioners as consignors, and (3) certain cash in the hands of the Trustee received by him from S. T. Hills, as assignee for the benefit of creditors.

CLAIM OF ROBERT W. IRWIN COMPANY.

The Irwin Company, of Grand Rapids, Michigan, hereinafter referred to as the manufacturer, had been selling furniture of its manufacture on open account to the bankrupt, hereinafter called the dealer, for about two to five years prior to April 1, 1928.

The dealer had become very much in arrears in the payments on its account, and as a result of the manufacturer's efforts to get the accounts in proper shape Mr. Wadenstein, President of the dealer company, went to Grand Rapids in November, [150] 1927. At that time the dealer owed the manufacturer approximately $20,000.00, of which approximately $8,000.00 was for goods shipped during the year 1927 and the balance was for goods shipped prior to 1927.

Mr. Wadenstein proposed to liquidate the ac-

count by paying $2,000.00 a month commencing in November, and to try and work out some plan in the spring, before the removal of the dealer to its new store, whereby the manufacturer would be justified in extending credit for goods for the new store.

The dealer made two payments—one of $2,000.00 in November, 1927, and one of $2,000.00 in December; but made no other payments until some time in April after the purported consignment agreement was made.

In the month of March, 1928, the manufacturer received from the dealer an order for over $15,000.00 of goods for the new store but refused to ship any goods on that order until further payments should be made.

About this time, in March, Mr. Robert W. Irwin, President of the manufacturer company, had a conference about this matter, in New York, with Mr. Jack Rothschild, President of Ketcham & Rothschild, whose situation with reference to the extension of credit to Renfro-Wadenstein was known to be about the same as that of Irwin & Co.

A second conference was had in Grand Rapids, where Mr. Rothschild went to see Mr. Irwin about this matter, because Mr. Rothschild was going to Seattle. In this conference Mr. Irwin indicated his willingness to enter into a consignment contract, if agreeable to the dealer, and authorized Mr. Rothschild to act for him in negotiating some arrangement, subject however to Irwin's final approval.

Mr. Rothschild went to Seattle arriving in March, 1928, [151] and remaining about three days. As a result of his conferences with the officers of the dealer company the latter company signed the following two written instruments, (1) An agreement which now bears date April 1, 1928, providing that Robert W. Irwin Company, therein named as first party, should furnish goods to Renfro-Wadenstein, named as second party therein, on the terms and conditions therein set forth, (2) And a letter addressed to Robert W. Irwin Company, dated March 23, 1928, referring to the said instrument of April 1, 1928, and particularly to paragraph number nine thereof.

This letter of March 23, 1928, together with two copies of the contract signed by the dealer were sent to the manufacturer who received them about March 27th or 28th. When Mr. Irwin received these copies the date was blank. He wrote in the date April 1, 1928, and executed the contract immediately on behalf of his company but retained both the copies in his possession until September 5, 1928, when he sent one of these back to the dealer.

Paragraph nine of the agreement recited and provided in substance that the dealer had in its possession certain goods "as per attached list" which had theretofore been sold and delivered to it by the manufacturer on credit and had not been paid for; that the title to said goods "is hereby transferred and conveyed back" to petitioner, and should thereafter be treated as having been de-

livered to the dealer "on consignment and under and subject to all of the terms and conditions of this contract;" and that in consideration of said transfer and conveyance of the title of said goods back to the manufacturer, "that company (the manufacturer) does hereby cancel" the indebtedness of the dealer for said goods.

The letter of March 23d written by the dealer provided [152] in substance that they would furnish, shortly after the first of the month an inventory of the manufacturer's merchandise on hand, and would also furnish a "bill of sale which will act as a transfer back to your Company of this merchandise" and that any difference in the amount of the account would be taken care of in three equal payments; thirty, sixty and ninety days.

The bill of sale was not executed by the dealer until about August 6, 1928. Upon its execution it was forwarded to the manufacturer but was never filed for record.

On about October 3, 1928, the dealer made an assignment for the benefit of its creditors to S. T. Hills. On October 19, 1928, the petition in bankruptcy was filed, a receiver was appointed and thereafter trustee.

The basis of the manufacturer's entire claim in the controversy is the contract consisting of the written agreement of April 1st and the letter of March 23, which the manufacturer contends was one of bailment or consignment covering and affecting, (1) the goods in the dealer's possession

on April 1st referred to in Paragraph nine of the agreement and described in the bill of sale of August 6th, (2) The goods shipped by the manufacturer to the dealer subsequent to April 1st.

CONSIGNMENT OR SALE.

The fundamental question to be determined is whether the transaction was one of consignment or one of sale. If the goods were sold to the dealer absolutely then obviously the manufacturer would have no case. If the goods were sold to the dealer on a conditional sale then the petitioner would be barred from recovery by the failure to file a conditional sales contract for record. If, on the other hand, the dealer was merely the agent or bailee then the petitioner would have a primary right of recovery. [153]

The distinction between agency and sale is stated by Mechem as follows:

> "The essence of the agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal, who remains the owner of the goods and who therefore has the right to control the sale, to recall the goods and to demand and receive their proceeds when sold, less the agent's commission, but who has no right to a price for them before sale or unless sold by the agent."
>
> Mechem on Sales, sec. 43.

The Supreme Court of the United States marked the distinction between bailment and sale in the following language:

"The recognized distinction between bailment and sale is that when the identical article is to be returned in the same or in some altered form, the contract is one of bailment, and the property is not changed. On the other hand, when there is no obligation to return the specific article, and the receiver is at liberty to return another thing of value, he becomes a debtor to make the return, and the transaction is a sale."

Sturm vs. Boker, 150 U. S. 312; 27 L. Ed. 1093.

This rule of distinction was later reaffirmed as in the case of Ludvigh vs. American Woolen Co., 31 A. B. R. 481; 231 U. S. 522.

In the latter case, however, the court indicated that where the controversy is not limited to the parties to the agreement, and the rights of creditors are involved, there may be other circumstances controlling and establishing that the contract is a mere cover for a fraudulent or illegal purpose.

The Court of Appeals for this circuit following the Ludvigh case has held;

"To constitute a sale, there must have been in the contract a vendor and a vendee, and a provision for a transfer of property by the vendor to the vendee, and a provision for a transfer of property by the vendor to the vendee, and an obligation by the vendee to pay an agreed price therefor, or the circumstances outside the contract must have been such as to show that it was the intention of the parties

to make of the contract a fraudulent concealment of an actual sale." [154]

Miller Rubber Co. vs. Citizens' Bank, 37 A. B. R. 542; 233 Fed. 488.

General Electric Co. vs. Brower, 34 A. B. R. 642; 221 Fed. 597.

Matter of King, 45 A. B. R. 95; 262 Fed. 318.

Our inquiry, therefore, must extend not only to the terms of the written instrument but also to the circumstances outside the written contract.

First, as to the written instrument. This embodies some elements which are more in harmony with a transaction of consignment, and other elements which partake more of the nature of a sale. In construing the contract;

> "It is necessary to ascertain and give effect to the dominant thought regardless of formal statement for the true nature of the transaction depends less on the terms in which it is described than upon the rights and liabilities which it creates."
>
> In the Matter of Eichengreen, 9 A. B. R. N. S., 699, 704; 18 Fed. (2d) 101.

Turning to a consideration of these elements of the contract, we find:

1. The manufacturer agrees to "ship goods on consignment" in such amount as shall be satisfactory to it. The transaction is thus expressly denominated a consignment. This designation, however, is little, if anything more, than a mere label, the truth or validity of which depends on the force

and effect of the provisions fixing the respective rights and obligations of the parties.

2. The dealer agrees to pay all freight and carriage charges immediately on arrival of goods. It further agreed that in case any of the goods shall at any time be recalled by the manufacturer the dealer will crate them and place them on cars at Seattle; and also in the event of termination of the contract, if the dealer does not elect to sell the goods to the dealer, then [155] the dealer shall crate the goods and place them on cars at Seattle.

This obligation of the dealer to pay freight and similar charges has been pointed out by the courts in some cases as one of the indicia of a sale. In other cases a different view has been expressed. Probably these expenses would ordinarily be placed on the owner of the goods, whether that be the manufacturer or the dealer. It is competent, however, for the parties to a consignment agreement to enlarge or restrict their mutual rights and duties, with limitations, without changing the nature of the contract. The imposition on the dealer of this duty to pay these charges, may weigh in some slight degree in the balance, but is far from determinative.

3. The goods are to be insured in the name of the petitioners. This would indicate consignment and is to be weighed accordingly.

4. (a) The dealer is to hold the goods exclusively for resale for the account of the manufacturer at not less than the net invoice price, and pending sale shall care for the goods for the manufacturer, but at the dealer's expense.

(b) The dealer's compensation is called commission and fixed as the difference between the invoice and sale price.

(c) The dealer shall furnish to the manufacturer on the 1st and 15th of each month an itemized record of the "consigned goods" separate from other sales.

(d) The dealer shall make remittance on the 20th of each month for goods sold during the preceding month.

(e) If the dealer, because of its failure to receive from its customer payment for goods sold, shall not be able to make payment in cash, it shall give the manufacturer a demand note "collateraled by the assignment of accounts receivable."

(f) The dealer guarantees the credit of all customers and the collection of all accounts. [156]

(g) The dealer shall pay a carrying charge of 7% for the time after the date of shipment that the merchandise remains unsold.

(h) The consigned goods or the accounts representing the same and the proceeds thereof shall continue to belong to and be the property of the factory until remittance therefor shall have been made.

Of the foregoing, items b, f, and g, are peculiar to neither a consignment nor a sale. The dealer's compensation is called a commission, but is determined by the identical factors which fix a dealer's profit. The dealer keeps the difference between the invoice and the sale price, and pays all expenses. The name by which we designate the residuum left to him is immaterial.

The guaranty of accounts and their collection is not a distinguishing mark. In that respect a dealer who buys and sells is for all practical purposes on the same footing as a *del credere* agent. The obligation to pay a carrying charge on goods unsold after ninety days is consistent with either a consignment or a sale. The parties to a consignment contract might properly agree upon such a provision as an incentive for the consignee to make a prompt turnover of the goods. With equal legal propriety the parties to a sale might enter into a credit arrangement embodying this feature. In fact we find an analogous, or perhaps an identical, credit arrangement called a "frozen credit" which was in use between Ketcham & Rothschild and Renfro & Wadenstein when goods were being sold to the latter on credit.

The remaining items of this paragraph must be considered more closely in connection with the contract as a whole, taking into account the omissions therefrom as well as the expressions therein. [157]

5. The contract is terminable at the will of either party. In case of such termination the manufacturer shall have the right at its option to require the dealer to keep and pay for the goods then remaining on hand.

The contract says that the dealer shall hold the goods exclusively for resale for the account of the factory. This provision standing alone would tend very strongly to establish a consignment.

Does this holding of the goods exclusively for re-sale exclude the dealer from the right to pur-

chase at any time? There is no express prohibition on the dealer stated in the contract. On the contrary there is a provision in the contract (Par. 10) which, in effect obligates the dealer to buy these goods whenever the factory elects to require it. There is no logical nor legal reason presented in the contract, in the relations of the parties, nor in the surrounding circumstances, for barring the dealer from the right to purchase. The factory had been selling to the dealer outright for a long period of time and was unquestionably willing to continue so long as and whenever it received pay for its goods. Clearly the dealer might become the purchaser of the goods. The question remains whether it did become the purchaser—either absolute or conditional.

The contract provides that the resales shall be made for the account of the manufacturer and provides for itemized records of sales and remittances. Some of the omissions of the contract may here be noted. It omits any requirement that the goods be kept segregated from the dealer's general stock, that the goods be earmarked to show that they are consigned goods belonging to the factory, that the accounts receivable or conditional sales contracts for goods resold to customers should cover [158] consigned goods only and not intermingle other goods under the same account or contract, that the accounts for consigned goods sold and the proceeds thereof shall be kept separate and not intermingled with the accounts and funds of the dealer, or that the identical accounts or identical

proceeds thereof should be transmitted to the manufacturer. Thus while the contract named the manufacturer as the owner, it permitted to the dealer an ostensible ownership of the goods and a dominion both over the goods and the proceeds thereof.

In harmony with this dominion, is the provision of the contract requiring the dealer to assign accounts receivable as collateral for unpaid balances to the manufacturer.

The assignment by the dealer presupposes its ownership of these accounts. The assignment to the manufacturer presupposes its non-ownership of these accounts. The provision for collateral is therefore inconsistent with the theory of consignment.

The terms of the contract which require periodical itemized reports and remittances for goods sold, and which provides that the goods and the accounts and proceeds shall be the property of the manufacturer until remittance made, might find a place either in a consignment or a conditional sale contract. Those terms, however, when construed in conjunction with the provisions for using the accounts as collateral, cannot be held to establish the contract here as one of consignment.

The contract provides that the goods shall be resold for not less than the invoice price. It does not however specify a price at which they shall be sold. One of the tests of consignment or sale is whether the price of resale is fixed by the furnisher or left to the receiver. The courts have differed on the question whether the naming of a minimum

price by the manufacturer constitutes such a fixing. [159]

One of the "indelible" marks of a consignment is the right of the manufacturer to repossess. The provisions of the contract looking to the repossession of the goods by the manufacturer are to be found in paragraph eight and paragraph ten.

Paragraph eight reads as follows:

> "In case any of said goods shall at any time be recalled by said party of the first part, the said party of the second part shall crate and place on cars at Seattle."

Paragraph ten provides:

> "In the event that party of the first part shall not elect to sell said goods to party of the second part, then upon termination of the contract it shall be the duty of party of the *second part, then upon termination of the contract it shall be the duty of party of the* second part to crate and place on cars at Seattle, unless otherwise directed by party of the first part."

Paragraph ten confers a right to recall or repossession of the goods only in the event of a termination of the contract. It contemplates no further continuance of the contract when the recall is once exercised. Is any right of repossession during the life of the contract given by paragraph eight? If the last-named paragraph stood alone it could be said with much force that its terms presuppose a right to recall at any time, and where such a right is necessarily presupposed it is, in

legal effect, granted. But the paragraph does not stand alone. It must be considered in connection with the other provisions of the contract. It may be construed as merely prescribing the duties of the dealer when the manufacturer exercises the right of repossession granted by section ten, but as not creating any such right.

It may be said, however, that such construction would make of paragraph eight a mere ineffective duplication of paragraph ten. But on the other hand it might be said with equal force that if paragraph eight confers a right of recall at any time, then paragraph ten is merely repetitious and adds no rights to those granted in paragraph eight. [160]

The contract was devised, proposed, and drafted with deliberation by the manufacturer. It would have been extremely simple to use clear and express terms creating the right of recall during the life of the contract—if such right were within the contemplation or agreement of the parties. Such terms were not employed. It is apparent, therefore, that the parties contemplated the dealer's dominion over the goods during the life of the contract. That dominion could be terminated only by the termination of the contract. Manifestly, the provisions of paragraphs eight and ten were merely designed to give the manufacturer a means of protecting its reserved title or lien in case financial disaster or other event made it desirable for the manufacturer to terminate the contract and discontinue its business with the dealer. A sale rather

than a bailment was in the contemplation of the parties.

These conclusions are in accord with the reasoning and conclusions of the court in re:

> Eichengreen, 18 Fed. (2d) 101; 9 A. B. R., N. S., 699; (affirmed as) Reliance Shoe Co. vs. Manly, 25 Fed. (2d) 381; 11 A. B. R., N. S., 560.

In that case the dealers agreed:

> " . . . . that we will not claim any right, title, or interest in the merchandise shipped us, or interfere with or prevent you from recovering your goods when you so desire to do."

Those terms are far stronger than the provisions of paragraph eight in the contract here involved, yet the court upon a consideration of the whole contract limited their scope and held the contract to be one of sale.

Vital features of the contract under consideration are the rights to terminate the contract at the will of either party and in the event of such termination the right of the manufacturer at its option to recall the goods then on hand or to require the dealer to keep and pay for them. [161]

The manufacturer contends in the language of the court's opinion in the matter of Eichengreen, 18 Fed. (2d) 101; 9 A. B. R., N. S. 699, that:

> " . . . . an agreement on the part of the dealer to purchase goods, either at his own option, or at the option of the manufacturer, upon a certain contingency, does not merely

create an agreement of sale. A valid contract of consignment may provide for a change of relationship during the course of the transaction; but, until the contingency appears the agreement remains one of consignment."

In further support of this contention the following cases are cited by the petitioner:

In re Sachs, 21 Fed. (2d) 984; 10 A. B. R., N. S., 505.

Mitchell Wagon Co. vs. Poole, 235 Fed. 817; 37 A. B. R. 656.

In re Galt, 124 Fed. 64; 13 A. B. R. 575.

In re Harris & Bacherig, 214 Fed. 482.

Franklin vs. Stoughton Wagon Co., 168 Fed. 857; 22 A. B. R. 63.

McCallum vs. Bray Robinson Clothing Co., 24 Fed. (2d) 35, 11 A. B. R., N. S., 452.

In re Pierce, 157 Fed. 757; 19 A. B. R. 644.

McKenzie vs. Roper Wholesale Grocery Co., 70 S. E. 981.

Rockmore vs. American Hatters & Furriers, Inc., 15 Fed. (2d) 272, 8 A. B. R., N. S., 867.

Brandsford vs. Regal Shoe Co., 237 Fed. 67; 38 A. B. R. 450.

Ellet-Kendall Shoe Co. vs. Martin, 222 Fed. 851, 34 A. B. R. 502.

In re Thomas, 231 Fed. 513; 36 A. B. R. 600.

The District Court in the Eichengreen case, and the Circuit Court of Appeals which reviewed that case under the title [162] of Reliance Shoe Company vs. Manly (25 Fed. (2d) 381; 11 A. B. R., N.

S., 560), both held the transaction there involved to be one of sale and not one of consignment.

The Sachs case was reviewed in the Circuit Court of Appeals under the title of Joseph vs. Winakur, 30 Fed. (2d) 510, 13 A. B. R., N. S., 259, where it was held that the instrument in question was a chattel mortgage and did not effect a bailment.

In Mitchell Wagon Company vs. Poole the decision was based primarily on the right of the manufacturer to reclaim the goods at any time.

In the Galt case the contract was quite similar, if not identical in its terms, with the contract in the Mitchell Wagon Company case. In its opinion the Court used the following language in the Galt case:

> "The clause in the contract giving an option to the company to require Galt to give his note or to pay cash, or to store subject to the order of the company, the goods not sold within twelve months, is probably the strongest clause in the contract to indicate a sale; but as suggested by the Supreme Court of Illinois in Lenz vs. Harrison, 148 Ill. 598, while it might have such force considered alone, taking it with the whole contract, it was seemingly incorporated to compel the agent promptly to sell and report sales within the time stated."

In the Harris & Bacherig case:

> "The consignment contract expressly reserves title in the consignor with the right to

demand the return of the unsold goods . . . . "

In the Franklin vs. Stoughton Wagon Company case the Court says that the contract:

" . . . . contains a plain provision that the goods are at all times subject to the order of the Wagon Company until they are sold, and we think there is no doubt about the right of the Wagon Company under the contract to require the goods returned."

In re Pierce, the option was vested in the dealer and not in the manufacturer. In that respect the decision in that case would seem to be in conflict with many of the authorities [163] including the opinion of Judge Neterer on the claim of Regal Gasoline & Engine Company in the case of Caldwell Machinery Company, 215 Fed. 428, 435.

In McKenzie vs. Roper Wholesale Grocery Co., the Court said:

"The test seems to be this; If the person to whom the possession of the property is delivered gets it by virtue of a contract of purchase (i. e. gets it under such circumstances that the person parting with the possession can sue for the purchase price irrespective of whether the person to whom the possession is delivered as sold or otherwise disposed of the goods) the contract is one of conditional sales, notwithstanding it may impose limitations upon the purchaser's right to dispose of

the property and may require a definite plan of accounting."

Rockmore vs. American Hatters & Furriers, Inc., does not seem to have any bearing on the construction of an optional clause to require the dealer to purchase.

In Bransford vs. Regal Shoe Company the manufacturer had the right to recall the goods at any time.

In Ellet-Kendall Shoe Co. vs. Martin, the manufacturer had the right to recall any of the goods at any time.

In each of the foregoing cases cited by petitioner where the Court applied the above-stated rule as to the optional clause, the option was dependent upon some outside condition or contingency such as the dealers breach or failure to perform the contract, or if goods remained in the dealers hands at the expiration of a fixed period of time, or if the dealer should sell or close out his business, or if the dealer became bankrupt. In the case at bar the option is not dependent on any outside condition or contingency but may be exercised by the manufacturer at its will at any time by terminating the contract. The manufacturer here has it in its power independently of any contingency to impose at any time upon the dealer the obligation to pay the purchase price of the goods even though they have not been resold. [164]

This optional right of the manufacturer to compel the dealer to pay for the merchandise at will

is one of the controlling factors of the contract and tips the scales on the side of the sale. This conclusion does not conflict with the opinion in the case In re Caldwell Machinery Company, 215 Fed. 428. In that case the trustee based his position on the 9th paragraph of the contract which contained a covenant to purchase, but this 9th paragraph had been closed out and stri*k*en. Judge Neterer held in effect that other clauses in the contract referring to the 9th paragraph were ineffective to reincorporate that paragraph in the contract.

The petitioner has also relied upon the following Washington cases: Inland Finance Company vs. Inland Motor Car Company, 125 Wash. 301; Ranson vs. Wickstron, 84 Wash. 419; Elers Music House vs. Fairbanks, 80 Wash. 379; Hansen Service Inc. vs. Lunn, 55 Wash. Dec. 115.

In each of these cases there was either no obligation on the dealer to pay for the goods unless and until the same were sold or else there was a right on the part of the manufacturer to repossess the goods at any time. In the Hansen Service Inc. case the contract provided:

> "Consignor may at any time, without notice with consignee, take possession of any goods shipped to the consignee hereunder."

The court referred to this as:

> "One of the most important features of the contract herein."

Those Washington cases are, therefore, to be distinguished from the case at bar.

The conclusion that the contarct under consideration was one of sale rather than one of consignment is further supported by the surrounding circumstances. These circumstances are also entitled to consideration under the rule laid down by the Circuit [165] Court of Appeals in the cases of General Electric Co. vs. Brower and Miller Rubber Co. vs. Citizens Bank hereinabove quoted.

The dealer had been purchasing furniture from the manufacturer on open account for a number of years but became unable to meet its obligations to the manufacturer and to other creditors in due course of business. It gave notes, renewal notes and postdated checks. This situation became serious in November, 1927, and critical in March, 1928, when the manufacturer refused to fill an order from the dealer for $15,000.00 worth of goods until further payment be made on the account. This led to the contract of April 1, 1928. This contract was never placed on record nor made public. The goods of the manufacturer's make, including those in the possession of the dealer on April 1st and those subsequently shipped were mingled with other goods in stock and were not tagged or marked in any way to show that they were consigned goods. Some of these goods were resold on open account and some on conditional sales contract. The account on conditional sales contract with any one customer would in some instances include the so called consigned goods to-

gether with other goods. The payments made by such customers would be applied generally to his account without being allocated or credited to any specific item of goods bought.

The dealer, prior to the contract of April 1st, made a practice of assigning its accounts to discount companies to finance the carrying on of its business. It continued this practice until it ceased doing business and included in the account thus assigned those which represented the so-called consigned goods. The proceeds of the so-called consigned goods were not kept separate or apart but were mingled in one deposit with the dealer's other funds.

The dealer did not comply with the provision of the contract that it should make reports upon the 1st and 15th of each month and make remittances for goods sold on the 20th of each month. These practices were tolerated by the manufacturer. [166]

This toleration of departures from the letter of the contract and of practices out of harmony with relation of principal and agent were foreshadowed by Section 7 of the contract. That section provides:

> "Neither the invoicing of said consigned goods to the party of the 2nd part nor the charging of the same to it on the books of said party of the first part, nor the delivering of such transactions, whether for convenience or otherwise, in any manner or form inconsistent herewith shall be deemed to change or dis-

continue this agreement or prevent said consigned goods from being held, handled and remitted for under and according to the terms hereof."

That section of the contract apparently reflects an intention of the parties to carry on business in a manner that carried no warning to the public of any bailment but saving to the manufacturer the secret right to repossess the goods in case of disaster. It would seem that this contract was intended by the parties to conceal an actual sale and that it would come within the rule stated in Miller Rubber Company vs. Citizens Bank, *supra.*

WHAT GOODS WERE SUBJECTED TO THE OPERATION OF THE CONTRACT.

If the contract of April 1st were in legal effect one of consignment it would then be necessary to determine what goods were subjected to its operation. The petitioner claims that by virtue of said contract it retained the title to, (1) goods shipped by it subsequent to April 1st, and (2) the goods in the possession of the dealer on April 1st.

First as to the goods shipped subsequent to April 1st. Of the goods shipped subsequent to April 1st the dealer reported only three items as sold. This report was made under date of August 4th. The items so reported were those bearing numbers 1287, 1337 and 1355. They had been shipped on April 13th, April 13th and April 24th respectively. The manufacturer in its letter of September 5th to the dealer challenged the inclu-

sion of those items in the report on the ground that they "were your [167] property as they were not included in the retransfer of title to us."

(See Petitioner's Exhibits 51, 48 and 56 and Irwin deposition page 47.)

This clear declaration is not overcome by other expressions in the testimony of a more or less general character that the shipments were made under the contract. By this declaration the manufacturer not only admitted but affirmatively asserted that the goods shipped after April 1st and up to the time of the letter were the property of the dealer. The evidence shows further that no shipments were made subsequent to September 5th. In other words, all the goods shipped after April 1st were declared by the manufacturer to be the property of the dealer.

Secondly, as to the goods in the possession of the dealer on April 1st.

The Trustee contends that the title to the goods in the possession of the dealer on April 1st was never passed to the manufacturer for the reasons, (1) that there was no transfer of possession and the bill of sale was never made a matter of record as required by Sec. 5827, Remington Compiled Statutes, (2) that because of the dealer corporation's alleged insolvency the transfer, made in consideration of an antecedent indebtedness, was invalid under the trust fund doctrine.

The letter of March 23d, which was a part of the contract of April 1st, and qualified Paragraph nine thereof, provided that the dealer should exe-

cute a bill of sale to the manufacturer of the goods on hand. The first bill of sale submitted by the dealer included more goods in value than the amount of the antecedent indebtedness and was rejected by the manufacturer as unsatisfactory.

The manufacturer suggested that the dealer retain title to all the goods of what was known as the Phoenix line and to part of the Royal line and should make some cash payments. [168] As shown by the correspondence there was no meeting of the minds of the parties on the goods to be included prior to August 6, 1928. A bill of sale bearing date of August 6th and acknowledged August 14th was executed by the dealer and sent to the manufacturer. In the meantime the manufacturer had been holding on his desk the executed duplicate originals of the so called consignment agreement. It was plainly indicated that the contract was being withheld from the dealer until a satisfactory bill of sale should be delivered. Finally on September 5th the manufacturer wrote:

> "We are duly in receipt of the corrected bill of sale of Royal goods and enclose herewith a copy of the consigned agreement."

The petitioner contends that the statute (Sec. 5827, Remington) requires the recording of a contract only "where the property is left in the possession of the vendor" and that the property included in the Irwin Bill of Sale was not left in the possession of the vendor within the meaning of that statute. The Washington cases cited by the petitioner of which perhaps the strongest is Has-

kins vs. Fidelity National Bank, 93 Wash. 63, declare the rule that as against creditors and subsequent purchasers it is not essential in all cases that there be an actual manual delivery, but they say further that such possession as a purchaser can reasonably take must be taken. In the Haskins case the vendee (or the mortgagee as it was held to be) by its agent checked over certain lumber in the yard of the vendor and employed someone to haul the lumber from the mill. There was some evidence that a small portion of the lumber was actually hauled. The major portion of the lumber, however, was in the yard at the time the vendor subsequently made an assignment for the benefit of his creditors. The facts in the Haskins case are far different from the facts in the case at bar. Here the contract of April 1st apparently contemplated a transfer *in praesenti* of all the goods in the dealer's [169] possession. This was qualified and modified, however, by the contemporaneous letter dated March 23d which provided that the title to the goods to be transferred should be so transferred by bill of sale thereafter to be executed. The execution and delivery of this bill of sale were held in suspension and the bill of sale was not accepted until September 5th. In the meantime the furniture to be transferred was not identified and neither the amount nor the articles to be transferred were finally determined until the bill of sale of August 6th and the acceptance on September 5th of an amendment of that bill of sale. At no time either prior or subsequent to September 5th were the goods checked over or

segregated, but on the contrary they were mingled with the other goods of the dealer in its general stock. It is apparent therefore that the manufacturer did not take "such possession as a purchaser can reasonably take."

The facts in the case at bar are quite similar to those in Matter of McCrory, 11 A. B. R., N. S., 437 where the court denied the petition for reclamation.

The Trustee invoked the rule of Thompson vs. Huron Lumber Co., 4 Wash. 600, that the property of an insolvent corporation is a trust fund for the benefit of its creditors, and contends that the attempted transfer of the goods in the dealer's possession to the manufacturer was preferential and invalid.

The Supreme Court of the State of Washington has held, in Nixon vs. Hendy Machine Works, 51 Wash. 419, and repeatedly in other cases that when a corporation is not able to pay its debts in due course of business, it is insolvent as far as creditors are concerned. Some doubt was cast on this being the sole test by certain expressions in Rosling vs. Evans, 123 Wash. 93, where the court apparently considered also the relation of assets to liabilities. [170]

Later, however, in the case of Brooks vs. Parsons Company, 124 Wash. 300, 303, the Court said:

> "A corporation which cannot pay its debts in the ordinary course of business is insolvent, even though the reasonable value of its assets may exceed the amount of its liabilities."

The testimony leaves no room for any conclusion other than that the dealer was unable to meet its obligations in the ordinary course of business. As far back as May, 1927, the dealer asked its creditors to accept renewal notes, stating it was hopeful that some time within the next few months it could get its decks clear so that it could approximate the maturities of its obligations. But this the dealer was never able to accomplish. It was subjected to repeated and insistent demands for the payment of long overdue obligations and was compelled to resort not only to renewal notes but to postdated checks in its effort to keep going. Many of the creditors the dealer owed when it failed had claims against the dealer that were owing in March, 1928. It is apparent, therefore, that under the State rule the dealer was insolvent in March, 1928. It may be said further that there is no convincing and competent testimony to establish the fact of solvency under any rule of comparing asserts with liabilities.

The petitioner contends that even if the dealer were insolvent in April, 1928, it would not follow that the bill of sale was an unlawful preference. The petitioner bases his contention on the authority of 14a C. J. 899, Rosling vs. Evans Co. *supra,* and Terhune vs. Weise, 132 Wash. 208. The petitioner's theory is that the dealer gave to the manufacturer a transfer of goods previously sold "in consideration for the shipment of some $20,000.00 worth of merchandise on consignment, which was of material and necessary assistance in the new venture, and a cancellation by the petitioners of the indebtedness created by the

[171] sale of the merchandise which was transferred back."

The contract itself recites that the consideration for the transfer and conveyance of the goods back to the manufacturer is the cancellation of the indebtedness of the dealer to the manufacturer. It is said in the Terhune case that:

> " . . . . where a present valuable consideration passes to the insolvent corporation from the creditor, the amount paid by, or secured from, the insolvent to such creditor cannot constitute preference."

So far the terms of the contract disclose the only consideration was not a present one but was the cancellation of the antecedent indebtedness. Neither the agreement in the contract to ship on consignment nor the shipment itself would bring this situation within the principles of the Terhune case. The promise of the manufacturer to ship was purely an optional one because it was obligated to ship goods ordered by the dealer only in such amount as should be satisfactory to the manufacturer. The actual shipments were to be made with the reservation that the manufacturer could at any time terminate the contract and recall the goods. So there was no binding obligation in this case to render financial assistance as there was in the Terhune case. In this case the manufacturer merely undertakes it at its own unfettered option to furnish and leave in the hands of the dealer only such goods and at such times that its own protection may be assured or to furnish and leave no goods whatever.

CLAIM OF KETCHAM & ROTHSCHILD.

The Ketcham & Rothschild contract and accompanying letter of March 23d are identical in their terms with the Irwin & Co. contract and letter. The negotiations for the execution of the contact were the same. Ketcham & Rothschild's business and credit relations and position with the dealer were closely similar, although the former does not seem to have had any orders on hand which it withheld from shipment pending payment on old accounts. [172] The history of carrying out the terms of the agreement (with the exception hereafter noted) was practically the same in the cases of both petitioners, Ketcham & Rothschild may not have been quite as lax in some respects as Irwin & Co., yet the dealer did not carry out the requirements of the contract with respect to making reports and remittances. On the other hand the testimony was more direct in the Rothschild case than in the Irwin case that the manufacturer knew that the dealer was continuing the practice of assigning accounts.

The only substantial difference between the cases of the two petitioners relates to the bill of sale transferring goods on hand back to the manufacturer.

The letter of March 23d, was a part of the contract. It provided for the subsequent execution of a bill of sale. Such a bill of sale was executed on April 16th, and delivered to Ketcham & Rothschild. It was filed in the office of the Auditor of King County, Washington, on April 24th, which was with-

in the statutory ten day period. This bill of sale, however, is here invalid because of the vendor's insolvency.

In the Irwin Company case and in the Ketcham & Rothschild case it is my conclusion that, (1) The contracts are contracts of sale and not of consignment, (2) The circumstances outside the contracts require that they be given the legal effect of sales, and (3) there was no valid transfer of goods from the dealer to the petitioner.

Both petitions are denied and an order may be entered accordingly.

Dated at Seattle, in said District, this 23d day of April, 1930.

BEN. L. MOORE,
Referee in Bankruptcy. [173]

#9085. Renfro-Wadenstein, a Corp., and Renfre-Wadenstein Furniture Co.

Certificate on review dated December 31, 1930.

[Endorsed]: Filed Dec. 31, 1930. [174]

[Title of Court and Cause.]

DECISION.

February 5, 1931.

This case is before the court on petition for review. The parties are in substantial agreement on the Referee's findings: That the bankrupt was engaged in the retail furniture business at Seattle; that Robert Irwin & Co., and Ketcham & Rothschild, Inc., were engaged in the manufacture of furniture

at Grand Rapids, Michigan, and Chicago, Illinois, respectively; that in November, 1927, the bankrupt owed Irwin & Co. approximately $20,000.00, of which 8,000.00 was for goods shipped during 1927,—the balance prior to that time; that in November, 1927, bankrupt agreed to liquidate the account by paying $2,000.00 per month, beginning in November, 1927, and paid $2,000.00 in November, and $2,000.00 in December. In March, 1928, bankrupt placed [175] an order for $15,000.00 with Irwin & Company, who refused to ship until existing indebtedness was arranged for. During 1927 and until March, 1928, bankrupt had a so-called "frozen credit" with Ketcham & Rothschild up to $15,000.00, bankrupt to pay interest at 7% per annum for the use thereof, and any merchandise bought in excess of that sum to be paid on the usual terms. In March, 1928, bankrupt owed Ketcham & Rothschild approximately $16,000.00 or $17,000.00; all of which was evidenced by negotiable notes. In March, 1928, Irwin & Company and Ketcham & Rothschild had a conference about their respective accounts, and Rothschild came to Seattle, and on March 23, 1928, the bankrupt signed and delivered a so-called "consignment agreement," and a letter dated the same day; and Ketcham & Rothschild signed the agreement in Chicago on March 30, following, and bankrupt signed a similar agreement for Irving & Company on the same day in duplicate in blank, which were mailed to Irwin & Company and received by them on March 27 or March 28, and on April 1 dated the contracts and

signed them, but retained both in their possession until September 5, 1928, when one copy was sent to the bankrupt.

The so-called "consignment agreement" in substance provides that all merchandise shall be shipped F. O. B. factory, invoiced to the bankrupt, and shall be "charged provisionally to the consigned account" of bankrupt; the amount to be shipped to be determined by the manufacturer; the bankrupt agrees to accept all goods so shipped, [176] pay all freight and carriage charges, insure the same in the name of the manufacturer, care for the goods pending sale at its expense; goods to be held for "resale for account of said party of the first part at prices not less than the net invoiced price"; bankrupts to retain by way of commission on sales all sums above invoiced price; keep an itemized record of sales distinct from its other sales, and on the first and 15th day of each month furnish a list of sales of consigned goods sold during the preceding half month, giving selling price, terms, names and addresses of purchasers, to remit all moneys collected until the invoiced price is fully paid on the 20th of each month for goods sold during the preceding month; if collection has not been made the bankrupt to execute its demand note "collateralled" by the assignment of accounts receivable equal to the payment due, and guarantee the credit of customers on account of sale of goods, to pay a carrying charge equal to seven (7%) per cent after 90 days from date of shipment for merchandise unsold, carrying

charge to be paid the first day of January and July of each year; in case goods shall be recalled, the bankrupt agrees to crate and place on car, Seattle; the contract to continue until terminated by written notice of either party to the other. On termination shipper "shall have the right, at its option, to require the party of the second part to keep and pay for the consigned goods then remaining on hand, at the invoiced price thereof," to be paid for [177] 25% every thirty days until fully paid; the consigned goods, or the accounts representing the same and the proceeds thereof, to be the property of the shipper until remittance made and received.

Paragraph 9 of the so-called "consignment agreement" stated and provided that the bankrupt had in its possession certain goods as per "attached list," which had theretofore been sold and delivered to the bankrupt by the company on credit and had not been paid for; that the title to said goods is hereby transferred and conveyed back to the company, and should thereafter be treated as having been delivered to the bankrupt "on consignment and under and subject to all the terms and conditions of this contract"; That in consideration of said transfer and conveyance of the title of said goods back to the company, that company "does hereby cancel indebtedness of the bankrupt for said goods."

The letter further provided, in substance, that bankrupt would furnish, shortly after the first of the month, an inventory of the Company's mer-

chandise on hand and would furnish a "bill of sale" which will act as a transfer back to your company of this merchandise, and that any difference in the amount of the account would be taken care of in three equal payments, 30, 60, and 90 days.

The bankrupt on August 6, 1928, executed a bill of sale transferring certain items of furniture to Irwin & Company. On September 5, Irwin & Company accepted the bill of sale, and sent to the bankrupt one of the [178] executed copies of the so-called "consignment agreement." Between March and September 5, the bankrupt and Irwin & Company were having correspondence with relation to the so-called "consignment agreement." This bill of sale was never filed for record. No list of goods referred to in Paragraph 9 of the consignment agreement was attached to the contract at any time. At the time the contract was signed by the bankrupt, it furnished to Rothschild a memorandum of its stock and records upon which the approximate figures of the amount of goods of Ketcham & Rothschild were predicated.

April 16, 1928, bankrupt executed and delivered to Ketcham & Rothschild a bill of sale for the goods on hand at the time of the execution of the so-called "consignment agreement." This bill of sale was filed for record April 24, 1928, in the Auditor's Office of King County, Washington, the county of the bankrupt's place of business.

The bankrupt made some reports of sales, but not as required by the contract of March 30, 1928. The bankrupt paid Ketcham and Rothschild for all

goods which the bankrupt reported sold. All these payments were made in cash with the exception of one payment, which was by note.

After the execution of the so-called "consignment agreements," and bills of sale, Irwin & Company and Ketcham & Rothschild, respectively, credited the account with the value of goods set forth in the respective bills of sale. Irwin & Company on August 20, 1928, made its [179] last shipment of goods to the bankrupt. At the time the bankrupt signed a so-called "consignment agreement," and thereafter all the furniture of Irwin & Company and Ketcham & Rothschild in the possession of bankrupt was intermingled with other furniture. There was no physical change of possession, or segregation. The bankrupt was unable to pay its obligations in due course of business prior to November, 1927, and was insolvent under the state laws, which facts were known to both petitioners. The evidence does not fairly disclose the liabilities and reasonable value of the assets at the time of the so-called "consignment." All shipments made after March 30, 1928, were made directly on bills of lading to the bankrupt in substantially the same manner that shipments had been made prior to the execution of the so-called "consignment agreement." All invoices were marked, "terms special." The same phrase had been used on some invoices of goods prior to March 30, 1928.

The furniture received by the bankrupt under this consignment agreement was not segregated at any time and was intermingled with the bank-

rupt's furniture on display. This furniture bore tags or marks showing by what factory it was made, but bore no mark that it was consigned furniture, or that it was not the property of the bankrupt. The bankrupt kept a separate folder, designated a "consignment folder," in which were invoices for furniture on hand or shipped to the bankrupt under the [180] so-called "consignment agreements" with each of the petitioners. No disclosures on the books of the bankrupt were made showing that it held any goods under consignment, except that the matter was in a separate folder. Each petitioner carried a consignment account with the bankrupt on its books, and upon receiving a report from the bankrupt of a sale would make a direct charge against the bankrupt therefor.

The bankrupt did not make reports to the petitioners as required in the so-called "consignment agreement." On August 4, 1928, the bankrupt wrote to the Irwin Company enclosing a report of sales, with two notes in payment of the goods sold. No other report or payment was made. The notes were not paid and were held by the Irwin Company after adjudication in bankruptcy.

All goods were sold by the bankrupt, irrespective of consignment, billed under a common bill. The money was deposited by the bankrupt to its general commercial account, from which it paid its operating expenses and other needs, advertising, or changing its location of business.

After the alleged consignment arrangement and

at the time of removal to and opening at its new place of business, advertising announcing the opening was made in the newspapers of bankrupt's furniture, stock, among others, of the manufacture of both petitioners was published, with the financial assistance of both petitioners and other concerns with whom bankrupt dealt. No statement or intimation was made that the furniture was on consignment, and of the test of the advertisement petitioners had knowledge. [180½]

Beginning prior to March 30, 1928, and continuing until after the assignment for the benefit of creditors, the bankrupt discounted and assigned its contracts and accounts receivable to discount companies, and this practice continued after the so-called consignment agreements, all of which was known to the petitioners. The discount companies had no knowledge that the contracts were supposed to represent goods held on consignment.

An assignment was made October 3, 1928, for the benefit of creditors. The assignee sold some of the furniture, acting in the dual capacity as assignee and as agent of the discount companies. The proceeds of the collections on the contracts and the accounts which had been assigned were kept separate, with minor exceptions. After the assignment both petitioners made demand for the return of the furniture claimed by them to be on consignment. This being denied, petition was filed in bankruptcy October 19, 1928. Adjudication was made November 9, following, and W. S. Osborn was elected as Trustee and qualified November 21, 1928.

ROBERT W. IRWIN COMPANY.

The amount of furniture in the bankrupt's bill of sale to the Irwin Company was $14,490.45; the amount of furniture shipped by the Irwin Company to bankrupt subsequent to April 1, 1928, was $15,-409.00; a total of $29,899.45. The Irwin consignment furniture delivered to the Trustee was $18,-739.50 (including furniture in the bill of sale, $8,-391.00, and shipped by the Irwin Company subsequent to April 1, 1928, $10,348.50). The Trustee in Bankruptcy received the [181] contract and accounts receivable representing Irwin's "consignment" goods (including both goods described in the bill of sale and goods shipped subsequent to the so-called "consignment agreement"), $1,725.00. These were not collected prior to bankruptcy. The assignee received payments on the Irwin "consignment" furniture (including furniture described in the bill of sale and that shipped subsequent to the purported consignment agreement), sold prior to the assignment, $425.67, and sold "consignment furniture" (including furniture described in the bill of sale and furniture shipped subsequent to the purported consignment agreement), for which there was collected by the assignee, receiver and trustee, the sum of $2,062.00.

KETCHAM AND ROTHSCHILD.

The first shipments under the consignment agreement were made on April 2 and 7. The amount of furniture included in the bill of sale to this firm was $11,585.25. The amount shipped by it to bank-

rupt subsequent to March 30, 1928, was $7,047.06; total, $18,632.31. The amount of furniture delivered to the trustee in bankruptcy was $9,984.31 (made up of furniture described in the bill of sale, $5,751.75; furniture shipped after March 30, 1928, $4,232.56). The Trustee received contracts and accounts on consignment goods (including those in the bill of sale and consignment) theretofore sold and not collected prior to bankruptcy, $2,021.00. The assignee received consignment furniture (including those described in the bill of sale and subsequently shipped) sold prior to the assignment, $568.75; sold furniture (included in the bill [182] of sale and for which there was collected by the assignee, receiver and trustee), $1,593.50. The assignee turned over to the trustee in cash, $2,935.85. The Trustee in Bankruptcy, under order of the bankruptcy court, sold practically all of the furniture and receivables in his hands for $150,000.00 cash. It was agreed on stipulation, December 5, 1928, between the petitioners and trustee (a) that the sum of $21,785.55 should stand in lieu of the merchandise claimed by the petitioners; (b) that the sum of $9,874.05 shall stand in lieu of the unpaid accounts receivable and proceeds collected by the assignee and claimed by the petitioner at the date of bankruptcy.

At no time subsequent to March 30, 1928, were any of the receivables assigned to either of the petitioners or any collateral or any notes given to the petitioners for any assigned goods.

The Referee concluded, in substance, that the petitioners knew bankrupts were insolvent, and that

it was the intention of all the parties to make the fraudulent concealment of actual sales; that the bills of sale did not transfer the title to the property, nor the "consignment agreements" constitute the merchandise as consigned; and that neither petitioner has any right against any of the funds, except as a general creditor, and not entitled to reclaim any of its so-called "consigned" furniture or the proceeds thereof. [183]

POE, FALKNOR, FALKNOR, & EMORY, for Petitioners.

EGGERMAN & ROSLING, for Trustee.

NETERER, District Judge.—The legal issue involved is: Was the merchandise, cash or accounts in bankrupt's possession after adjudication held as on consignment as to either or both petitioners?

The state insolvency laws are not controlling, in view of sub. (15), section 1, Bankruptcy Act:

> "A person shall be deemed insolvent under the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts."

No actual fraud is shown within the state insolvency laws.

The Trustee is vested by operation of law with the title of the bankrupt and the rights of its exe-

cution creditors. Sec. 70, Bank'cy Act. In re Butterwick, 130 Fed. 371. And such rights are determined by the local law. Hewitt vs. Berlin Mach. Wks., 194 U. S. 296.

> "No bill of sale for the transfer of personal property shall be valid as against existing creditors, or innocent purchasers, where the property is left in the possession of the vendor, unless the bill of sale be recorded in the Auditor's office of the county in which the property is situated, *within ten days after such sale is made.*" (Italics supplied.) Sec. 5827, Rem. Comp. Stat. of Washington.

A delivered, unrecorded bill of sale is ineffectual as against creditors under section 5827, *supra.* Schloss vs. Stringer, 113 Wash. 229. And a bill of sale, to be effectual as against creditors, must be filed within ten [184] days after the sale is made. Sec. 5827, *supra.* "It does not say within ten days after the bill of sale is delivered." Schloss vs. Stringer, *supra,* at 532.

The so-called consignment agreement (Petitioners' Exhibit No. 1) signed by the bankrupts on March 23, 1928, and delivered to Ketcham & Rothschild, who signed it in Chicago, March 30, and the Irwin Company agreement mailed to the Irwin Company, received March 27 or 28, signed and dated by them April 1, but retained until September 5, when one copy was sent to the bankrupt.

Paragraph 9 of this agreement provides:

> " * * * It is hereby agreed that the title to such goods, and the same is, hereby

transferred and conveyed to said party of the first part (petitioners), and that from and after this date the same shall be delivered as having been delivered to said parties of the second part on consignment and under and subject to all of the terms and conditions of this contract. In consideration of the transfer and conveyance of the title to said goods back to the said party of the first part, that company does hereby cancel the indebtedness of the said party of the second part." (Bankrupt.)

The sale or transfer was made on the 23rd of March and delivered to and executed by the petitioners March 30 and April 1st, respectively. The bill of sale made on August 6, 1928, to Irwin & Company is but evidence of the sale made on the 23d of March, and the bill of sale not having been filed for record, cannot in any event have validity as against creditors, and, by the same token, the bill of sale executed by the bankrupts on the 16th day of April, 1928, and filed for record April 24 following, is evidence only of the transfer made in March, *supra,* and the filing on the 24th of April is ineffective. The fact that an inventory was furnished at a later date is [185] immaterial, since the contract was complete as to the essentials, and the formalities after inventory are immaterial. Granger & Co. vs. Louisville Cornice, Roofing and Heating Co., 116 S. W. 753; Sellers vs. Greer, 50 N. E. 246 (Ill.); McPherson vs. Fargo, 74 N. W. 1057 (S. D.); Harland vs. Logansport, 32 N. E. 930; Johnston vs. Trippe, 33 Fed. 530.

That the contract was completed is emphasized by the invoices from Ketcham & Rothschild dated April 2 and 7, 1928, which show a combined shipment of over $8,000.00. See Phillips vs. Moore, 71 Me. 78; Hosner vs. McDonnell, 114 Wash. 489. After the execution of the agreement the relation of the parties and merchandise was established, and neither had the right to change or give to the agreement its own interpretation. Mooney vs. Daily News Co., 133 N. W. 573 (Minn.); Sturtevant Co. vs. Cumberland D. & Co., 68 Atl. 351; Newhall Land & Farming Co. vs. Hogue Kellogg Co., 204 Pac. 562.

As to the merchandise sold on open account and retransfer attempted, the proof does not show resale.

Is the agreement one of sale or consignment?

As tending to show consignment, bankrupt agreed to insure the merchandise in the name of the manufacturer and sell it at not less than invoiced price, retain commissions on sales above invoiced price, keep itemized records of sales distinct from other sales, and make report at stated times of the consigned goods, giving the selling price, names and addresses of purchasers; if any goods were recalled, bankrupt agreed to crate and place on cars at Seattle. [186]

On the sale side, the merchandise was shipped F. O. B. Factory, invoiced to the bankrupt, and charged provisionally to the consigned account, the bankrupt to pay all freight and carrying charges, insurance premium, and expense of caring for the goods pending sale; if collection is not made,

bankrupt to execute a demand note, collateralized by the assignment of account equal to the amount due, and guarantee the credit of customers, and pay "carrying charge" equal to seven per cent after 90 days of shipment date for unsold merchandise; on termination of contract agreed to buy and keep merchandise at the option of manufacturer and pay 25% every 30 days until paid. It is provided the consigned goods, or the accounts, to be the property of the shipper or manufacturer.

A bailment is differentiated from a sale in that it contemplates no transfer of ownership. Sturm vs. Boker, 150 U. S. 312. An agreed price, a vendor, a vendee, an agreement to sell for the agreed price, and agreement of vendee to buy for and pay the agreed price are essential elements of a contract of sale. These elements are not in the agreement. The power to repossess the specific merchandise is an accident of bailment. In re Columbus Buggy Co., 143 Fed. 859. This right is in the contract. The mere fact that the contract provides that the bankrupt may fix the selling price at not less than invoice and to keep commissions, covering insurance, storage and expenses of keeping, does not constitute sale if there is no obligation of the bankrupt to buy. In re Columbus Buggy Co., *supra;* [187] Franklin vs. Stoughton Wagon Co., 168 Fed. 857; Ludvigh vs. Am. Woolen Co., 231 U. S. 522; see, also, In re Eichengreen, 18 Fed. (2) 101. Nor does the agreement of the bankrupt to guarantee the accounts of purchasers change the relation of consignment to sale. Ludvigh vs. Am. Woolen Co., *supra.* The agreement of the bankrupt to buy the

merchandise at the option of the manufacturer at the termination of the contract does not create a sale, as the parties may make a valid consignment agreement making provision for change, and until the change is effected, the agreement is one of consignment. Mitchell Wagon Co. vs. Poole, 235 Fed. 817. I have no doubt that the intent of the parties was in good faith to ship future merchandise on consignment, no present liability by the bankrupt was made, or right created to petitioner. In re Aronson, 245 Fed. 207. The relation was principal and factor, with the rights of each defined, rather than debtor and creditor. The superadded agreement as to purchase was a condition which had not matured. The petitioners, as the testimony discloses, had confidence in the bankrupts and "felt justified in backing them with merchandise to the extent of their new enterprise." There was no basis for credit, but did have a basis for payment. The contingency not having matured into a fixed status, the merchandise shipped on consignment and delivered to the trustee, should be accounted for by him.

AS TO ACCOUNTS AND CASH.

There is no evidence to show that the money held by the Trustee was received for sale of merchandise [188] held on consignment. The money claimed must be traced to the trust fund. See In re John Deere Plow Co., 137 Fed. 602. There is no evidence that the money in issue was received for the consigned merchandise, and upon report of sale the merchandise was billed to bankrupt as on sale; and

to recover, petitioner must prove his merchandise or money received for it, or trace the merchandise to the account. This has not been done. Zenor vs. McFarlin; In re Lockwood Grain Co., 238 Fed. 725.

The inevitable conclusion is that the merchandise of petitioners manufacture in bankrupt's possession on April 1, 1928, vested in the bankrupt, and that the attempted retransfer to the petitioners was ineffective; that the merchandise shipped subsequent to this date was held on consignment, and that the petitioners are entitled to the proceeds of the sale of such consigned merchandise as passed to the Trustee in bankruptcy. No trust relation has been traced to accounts which came into the possession of the Trustee in bankruptcy, or merchandise sold under consignment. These funds were so commingled with the general funds of the bankrupt that no identity is established.

It would unduly extend this memorandum to apply or distinguish the numerous cases cited by both parties and no good purpose would be served.

The order of the referee is affirmed, except as herein stated.

NETERER,
United States District Judge.

[Endorsed]: Filed Febr. 5, 1931. [189]

[Title of Court and Cause.]

ORDER UPON PETITIONS FOR REVIEW OF ROBERT W. IRWIN COMPANY, A CORPORATION, AND KETCHAM & ROTHSCHILD, INC., A CORPORATION.

This matter having previously and regularly come before this court for hearing upon the petitions of Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, for review of several orders of the Honorable Ben L. Moore, Esquire, Referee in Bankruptcy, entered on May 1st, 1930, said orders denying *in toto* several petitions for reclamation of furniture and merchandise filed by said Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, on or about the 17th day of November, 1928, the said Ben L. Moore, Esquire, as Referee, having duly heretofore certified to this court the testimony and exhibits involved in said petitions for reclamation, together with his conclusions thereupon, and this court having thereafter undertaken to review said orders, as provided by the Bankruptcy Law and General Order XXVII, and thereafter said petitions for review having been argued by counsel for the respective petitioners and by counsel for the Trustee, and thereafter the court being duly advised in the premises, having filed herein its Memorandum Decision concluding that the orders of said Ben L. Moore, Esquire, as Referee, so sought to be reviewed, were in certain respects incorrect. [190]

Now, Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the consignment agreements executed by and between the above-named bankrupt, Renfro-Wadenstein, a corporation, and petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, are and were, as respects all merchandise subsequently consigned thereunder, valid agreements of consignment, and that the petitioner, Robert W. Irwin Company, a corporation, is entitled to recover from Walter S. Osborn, as Trustee of the estate of the above-named bankrupt, and the said Trustee is hereby directed to pay to said claim, $7,243.95, being 70% of the invoice price of the furniture shipped by said petitioner, Robert W. Irwin Company, a corporation, to said bankrupt subsequent to the execution of the consignment agreement, coming into the hands of the Trustee in Bankruptcy, the invoice price of said consigned furniture being in the sum of $10,-348.50; and that the petitioner, Ketcham & Rothschild, Inc., a corporation, is entitled to recover from Walter S. Osborne, as Trustee of the estate of the above-named bankrupt, and the said Trustee is hereby directed to pay said claimant, the sum of $2,962.79, being 70% of the invoice price of the furniture consigned by said petitioner to said bankrupt subsequent to the execution of said consignment agreement, coming into the hands of the Trustee in Bankruptcy, the total invoice price of said consigned goods being $4,232.56. [191]

The proceeds of the sale of the furniture so

awarded petitioners having been placed on deposit drawing interest at the rate of 3% per annum from April 12, 1929, said petitioners are allowed interest on the award made them in this paragraph at the rate of 3% per annum from the 12th day of April, 1929, to date, and said Trustee is hereby directed to pay said petitioners said interest, in addition to the awards above made said petitioners.

2. Leave is hereby given petitioners to file in this matter their respective general claims for the furniture delivered by them to bankrupt other than that hereinabove specifically decreed to be their property.

3. The consignment agreements above referred to providing for the payment of a 7% carrying charge for a period beginning ninety days after the shipment of said furniture and during the period said merchandise remained in said bankrupt's hands, said petitioners are hereby awarded, in addition to the sums set forth in Paragraph 1, a carrying charge, as provided in said contract on the invoice value of the furniture shipped to the bankrupt subsequent to the execution of the consignment agreements for a period beginning ninety days after the shipment of said furniture and ending on the date of the filing of the petition in bankruptcy, this award to constitute a general claim.

4. In all other respects the Referee's orders are hereby confirmed.

5. No costs allowed to either party.

6. Both the Trustee and petitioners are hereby allowed exceptions to that portion of this order

Now, Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the consignment agreements executed by and between the above-named bankrupt, Renfro-Wadenstein, a corporation, and petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, are and were, as respects all merchandise subsequently consigned thereunder, valid agreements of consignment, and that the petitioner, Robert W. Irwin Company, a corporation, is entitled to recover from Walter S. Osborn, as Trustee of the estate of the above-named bankrupt, and the said Trustee is hereby directed to pay to said claim, $7,243.95, being 70% of the invoice price of the furniture shipped by said petitioner, Robert W. Irwin Company, a corporation, to said bankrupt subsequent to the execution of the consignment agreement, coming into the hands of the Trustee in Bankruptcy, the invoice price of said consigned furniture being in the sum of $10,-348.50; and that the petitioner, Ketcham & Rothschild, Inc., a corporation, is entitled to recover from Walter S. Osborne, as Trustee of the estate of the above-named bankrupt, and the said Trustee is hereby directed to pay said claimant, the sum of $2,962.79, being 70% of the invoice price of the furniture consigned by said petitioner to said bankrupt subsequent to the execution of said consignment agreement, coming into the hands of the Trustee in Bankruptcy, the total invoice price of said consigned goods being $4,232.56. [191]

The proceeds of the sale of the furniture so

awarded petitioners having been placed on deposit drawing interest at the rate of 3% per annum from April 12, 1929, said petitioners are allowed interest on the award made them in this paragraph at the rate of 3% per annum from the 12th day of April, 1929, to date, and said Trustee is hereby directed to pay said petitioners said interest, in addition to the awards above made said petitioners.

2. Leave is hereby given petitioners to file in this matter their respective general claims for the furniture delivered by them to bankrupt other than that hereinabove specifically decreed to be their property.

3. The consignment agreements above referred to providing for the payment of a 7% carrying charge for a period beginning ninety days after the shipment of said furniture and during the period said merchandise remained in said bankrupt's hands, said petitioners are hereby awarded, in addition to the sums set forth in Paragraph 1, a carrying charge, as provided in said contract on the invoice value of the furniture shipped to the bankrupt subsequent to the execution of the consignment agreements for a period beginning ninety days after the shipment of said furniture and ending on the date of the filing of the petition in bankruptcy, this award to constitute a general claim.

4. In all other respects the Referee's orders are hereby confirmed.

5. No costs allowed to either party.

6. Both the Trustee and petitioners are hereby allowed exceptions to that portion of this order

adverse to them, and the petitioners are further allowed an exception to the Court's refusal to sign their proposed order upon petitions for review of Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, heretofore filed in this cause. [192]

Dated this 1st day of May, 1931.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed May 1, 1931. [193]

[Title of Court and Cause.]

ORDER UPON PETITIONS FOR REVIEW OF ROBERT W. IRWIN COMPANY, A CORPORATION, AND KETCHAM & ROTHSCHILD, INC., A CORPORATION.

This matter having previously and regularly come before this court for hearing upon the petition of Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, for review of several orders of the Honorable Ben L. Moore, Esquire, Referee in Bankruptcy, entered on May 1st, 1930, said orders denying *in toto* several petitions for reclamation of furniture and merchandise filed by said Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, on or about the 17th day of November, 1928, the said Ben. L. Moore, Esquire, as Referee, having duly heretofore certified to this court the testimony and

exhibits involved in said petitions for reclamation, together with his conclusions thereupon, and this court having thereafter undertaken to review said orders, as provided by the Bankruptcy Law and General Order XXVII, and thereafter said petitions for review having been argued by counsel for the respective petitioners and by counsel for the Trustee, and thereafter the court being duly advised in the premises, having filed herein its memorandum decision concluding that the orders of said Ben. L. Moore, Esquire, as Referee, so sought to be reviewed, were in certain respects incorrect,—

Now, Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the consignment agreements executed by and between the above-named bankrupt, Renfrew-Wadenstein, a corporation, and petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, are [194] and were, as respects all merchandise subsequently consigned thereunder, valid agreements of consignment, and that the petitioner, Robert W. Irwin Company, a corporation, is entitled to recover from Walter S. Osborne, as Trustee of the estate of the above-named bankrupt, and the said Trustee is hereby directed to pay to said claimant, $7,243.95, being 70% of the invoice price of the furniture shipped by said petitioner, Robert W. Irwin Company, a corporation, to said bankrupt subsequent to the execution of the consignment agreement, coming into the hands of the Trustee in Bankruptcy, the invoice price of said consigned furniture being in the sum of $10,348.50; and that the petitioner, Ketcham & Roth-

schild, Inc., a corporation, is entitled to recover from Walter S. Osborne, as Trustee of the estate of the above-named bankrupt, and the said Trustee is hereby directed to pay said claimant, the sum of $2,-962.79, being 70% of the invoice price of the furniture consigned by said petitioner to said bankrupt subsequent to the execution of said consignment agreement, coming into the hands of the Trustee in Bankruptcy, the total invoice price of said consigned goods being *$4,23256.* Said petitioners are allowed interest on the award made them in this paragraph at the rate of 4% per annum from the date of the Trustee's sale in December, 1928, until paid.

2. As respects the furniture and merchandise delivered by petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, to the above-named bankrupt other than that consigned to said bankrupt by said petitioners subsequent to the execution of said consignment agreement, and coming into the hands of the Trustee in Bankruptcy, said petitioners have established and they are hereby awarded, general claims against the estate of said bankrupt equal to the sum total of the invoiced value of said furniture and merchandise as follows: [195] Robert W. Irwin Company, a corporation, the sum of $19,195.95; Ketcham & Rothschild, Inc., a corporation, the sum of $11,853.44. The general claim of Robert W. Irwin Company, hereinabove allowed, is not inclusive of or affected by the claim of Robert W. Irwin Company filed herein on May 29th 1929, in the sum of $1,-215.91, said claim not being among the items included in the matters litigated herein.

3. The consignment agreements above referred to (Par. 6) providing for the payment of a 7% carrying charge for a period beginning ninety days after the shipment of said furniture and during the period the merchandise remained in said bankrupt's hands, said petitioners are hereby awarded, in addition to the sums set forth in paragraphs numbered 1 and 2 hereof, interest as provided in said contract for said period to date of the filing of the petition in bankruptcy herein, this award to constitute a general claim.

4. In all other respects the Referee's orders are hereby confirmed.

5. Costs in the sum of $——— are hereby awarded to the petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation.

6. Both the Trustee and petitioners are hereby allowed exceptions to that portion of this order adverse to them.

Dated that —— day of April, 1931.

_____,

Judge.

[Endorsed]: Filed May 1, 1931. [196]

[Title of Court and Cause.]

COST BILL OF TRUSTEE W. S. OSBORN IN RECLAMATION PROCEEDINGS OF IRWIN & CO. AND KETCHAM & ROTHSCHILD.

The Trustee, W. S. Osborn, has incurred the

following expenditures and made the following disbursements in connection with the above reclamation proceedings:

1. To Raymond Trainor, Court Reporter, Trustee's share of charges for reporting of reclamation proceedings paid by Trustee's check in the following amounts:

No. 7	$ 11.25
No. 41	75.00
No. 292	45.00

2. To Raymond Trainor, Court Reporter, Trustee's share of the expense of transcript on petition for review:

No. 627	223.30

3. To Hills Auditing Co., on account of inventories, preparation of audit and reconciliation of Hills audit with audit of Smith, Robertson & *b* Co., payment by Trustee's checks in the following amounts:

No. 34, A. W. Hoffman	105.00
No. 35, S. T. Hills	75.00
No. 6, S. T. Hills Auditing Co.	180.00
No. 294, S. T. Hills Auditing Co.	75.00

4. To Bausman, Oldham & Eggerman, check No. 632 for payment of reporter's fee in reclamation proceedings 8.00

Total.....$797.55

EGGERMAN & ROSLING,
Attorneys for Trustee.

United States of America,
Western District of Washington,
Northern Division,—ss.

W. S. Greathouse, being first duly sworn, upon his oath deposes and says: That he is one of the attorneys for the Trustee, W. S. Osborn, in the above-entitled cause; [197] that he has read the foregoing cost bill and that the items therein contained are correct; that such disbursements have been necessarily incurred in this action by the Trustee and the services charged therein have been actually and necessarily performed as therein stated.

H. S. GREATHOUSE.

Subscribed and sworn to before me this 30th day of April, 1931.

[Notarial Seal] EDWARD F. STERN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Due service of the foregoing cost bill of Trustee W. S. Osborn, together with receipt of copy thereof, is hereby acknowledged this 30 day of April, 1931.

_____,
Attorney for Robert W. Irwin & Co. and Ketcham & Rothschild.

To Robert W. Irwin & Co. and Ketcham & Rothschild, Inc., and to Poe, Falknor, Falknor & Emory, Your Attorneys:

Please take notice that the above cost bill will be presented to the court for the purpose of taxa-

tion of costs on Friday, May 1, 1931, or at such other time as counsel may agree.

EGGERMAN & ROSLING,
Attorneys for Trustee.

Copy of within received April 30, 1931.
POE, FALKNOR, FALKNOR & EMORY,
Attys. for ————.

[Endorsed]: May 1, 1931. [198]

[Title of Court and Cause.]

COST BILL OF PETITIONERS, ROBERT W. IRWIN COMPANY, A CORPORATION, AND KETCHAM & ROTHSCHILD, INC., A CORPORATION.

S. T. Hills, taking and checking stock ....$	15.00
Smith, Robertson & Co., analyzing disposition of merchandise consigned	325.00
Raymond Trainor, services 12/6/28 to 3/26/29	103.85
Samuel T. Racine	10.00
Smith Robertson & Co., 3/29	100.00
Raymond Trainor (court reporter)	142.60
Raymond Trainor (court reporter)	67.60
Raymond Trainor (court reporter)	179.87
Certified copy of bill of sale	2.20
U. S. Marshall	8.56
Serving subpoena	1.40
Copy Company, taking photographs	40.78
Telegrams	40.78
Total .....$	1,011.16

[199]

United States of America,
Western District of Washington,
Northern Division,—ss.

DeWolfe, Emory, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for the petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, in the above-entitled cause, and that the above and foregoing statement of costs and disbursements, exclusive of the statutory attorney's fee, is true and correct and that the said amounts have been actually disbursed in said action.

DeWOLFE EMORY.

Subscribed and sworn to before me this 15th day of April, 1931.

[Notary Seal] DRAYTON F. HOWE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Due service of the foregoing cost bill of petitioners, Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, together with the receipt of a true copy thereof, is hereby acknowledged this 15th day of April, 1931.

_____,
Trustee in Bankruptcy.

[Endorsed]: Filed May 1, 1931. [200]

[Title of Court and Cause.]

PETITION FOR APPEAL OF ROBERT W. IRWIN COMPANY.

To the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court for the Western District of Washington, Northern Division:

1. Heretofore in the above-styled matter your petitioner, Robert W. Irwin Company, a corporation, filed its petition for the reclamation of certain furniture, accounts receivable and proceeds of the sale of said furniture and collections made upon said accounts receivable, which said petition in reclamation was thereafter heard by Ben L. Moore, Esquire, as Referee in Bankruptcy, and was thereafter denied *in toto.*

That thereafter your petitioner sought and obtained a review by the above-styled court of said Referee's order so denying its petition in reclamation and said Referee's order was by said court in part reversed and in part affirmed by an order entered in the above-styled matter by the Honorable Jeremiah Neterer, one of the Judges of the above-entitled court on the 1st day of May, 1931, which said order is styled "Order upon Petitions for Review of Robert W. Irwin Company, a corporation, and Ketcham—Rothschild, Inc., a corporation" and which said order is a final judgment or order upon said petition in reclamation of your

petitioner, Robert W. Irwin Company, a corporation.

2. That the final order referred to in the paragraph next preceding this was entered upon a controversy arising in bankruptcy proceedings, which said bankruptcy controversy and proceedings and order so entered on them involved the allowance and rejection of a debt or claim of $500.00 or over within the purview of Sections 24 and 25 of the Bankruptcy Act as Amended May 28th, 1926.

3. Your petitioner, Robert W. Irwin Company, considering [201] itself aggrieved by that portion of the order of the above-styled court entered on May 1st, 1931, denying in part the relief prayed for in its petition in reclamation herein, and relying upon General Order in Bankruptcy No. XXXVI and the applicable statutes, does hereby appeal from said order, and each and every part thereof, denying the relief prayed for in said petition in reclamation to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order in part denying said petition in reclamation of your petitioner was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WHEREFORE, your petitioner prays for the allowance of an appeal to the Circuit Court of Appeals for the Ninth Circuit, with a direction as to

the amount of the cost bond to be fixed upon said appeal.

Dated at Seattle, Washington, this 25 day of May, 1931.

DeWOLFE EMORY,
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner Robert W. Irwin Company, a Corporation.

Due service of the foregoing petition for appeal of Robert W. Irwin Company, together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee.

[Endorsed]: Filed May 25, 1931. [202]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS OF PETITIONER, ROBERT W. IRWIN COMPANY, A CORPORATION.

Comes now Robert W. Irwin Company, a corporation, petitioner in reclamation and appellant herein, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause from the final order affirming in part and denying in part the relief prayed for in the petition for reclamation of said petitioner, said order being entered in the above-styled matter by the above-styled court on the 1st day of May, 1931, said appeal being prosecuted

to the United States Circuit Court of Appeals for the Ninth Circuit:

1. The Court erred in failing to grant in it entirety the petition of reclamation of Robert W. Irwin Company, a corporation.

2. The Court erred in holding that the bill of sale from Renfro-Wadenstein to Robert W. Irwin Company, a corporation, dated August 6th, 1928, did not effectively pass title to the merchandise therein described to the petitioner, Robert W. Irwin Company, a corporation.

3. The Court erred in ruling that the bill of sale from Renfro-Wadenstein to Robert W. Irwin Company, a corporation, dated August 6th, 1928, was invalid.

4. The Court erred in failing to hold that there was a sufficient transfer of the merchandise described in the bill of sale of August 6th, 1928, from the possession of [203] Renfro-Wadenstein as owner to Renfro-Wadenstein as bailee, for petitioner to take the case out of the statute requiring recording of bills of sale.

5. The Court erred in failing to find that Renfro-Wadenstein was solvent at the time of executing the consignment contract and at the time of executing the bill of sale.

6. The Court erred in failing to find that the bill of sale of August 6th, 1928, was not a preference but was executed for a present valid consideration.

7. The Court erred in failing to find that the petitioner, Robert W. Irwin Company, a corpora-

tion, was entitled to the immediate possession of all accounts receivable in the hands of the Trustee which were unpaid by customers of Renfro-Wadenstein, said accounts receivable representing furniture sold, both by Renfro-Wadenstein and by S. T. Hill as assignee, said furniture being covered both by said bill of sale and by said consignment agreement.

8. The Court erred in failing to find and order that the petitioner, Robert W. Irwin Company, a corporation, was entitled to the immediate possession of certain sums of money collected by Renfro-Wadenstein and by S. T. Hill as assignee, said moneys being collections on account, representing furniture sold, said furniture being covered both by said bill of sale and by said consignment agreement.

9. The Court erred in finding that the contracts and accounts receivable of Renfro-Wadenstein owned by petitioner were negotiated to discount companies by Renfro-Wadenstein with the knowledge of petitioner.

10. The Court erred in refusing to allow petitioner its costs and attorneys' fees as prayed for. [204]

WHEREFORE, Robert W. Irwin Company, a corporation, petitioner and appellant, prays that said order entered in this cause on the 1st day of May, 1931, upon its petition for review of the Referee's order may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated at Seattle, Washington, this 25th day of May, 1931.

DeWOLFE EMORY,
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner and Appellant, Robert W. Irwin Company, a Corporation.

Due service of the foregoing assignment of errors of petitioner, Robert W. Irwin Company, a corporation, together with the receipt of a true copy thereof, is hereby acknowledged this 25th day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee.

[Endorsed]: Filed May 25, 1931. [205]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The petition of Robert W. Irwin, a corporation, petitioner in reclamation proceedings in the above matter, for an appeal from the final order denying in part and granting in part said petition in reclamation, entered in this cause on the 1st day of May, 1931, to the Circuit Court of Appeals for the Ninth Circuit, is hereby granted and the appeal is allowed.

Said petitioner's cost bond on said appeal is hereby fixed in the sum of $250.

Done in open court this 25th day of May, 1931.

BOURQUIN,
District Judge.

[Endorsed]: Filed May 25, 1931. [206]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Robert W. Irwin Company, a corporation, as Principal, and American Bonding Co. of Baltimore, as surety, are held and firmly bound unto Walter S. Osborn, as Trustee in Bankruptcy of Renfro-Wadenstein, a corporation, and Renfro-Wadenstein Furniture Co., a corporation, bankrupts, in the sum of Two Hundred and Fifty and no/100 Dollars ($250.00), to be paid to the said Walter S. Osborn as Trustee in Bankruptcy of Renfro-Wadenstein, a corporation, and Renfro-Wadenstein Furniture Co., a corporation, bankrupts, his successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

SEALED with our seals and dated this 25 day of May, 1931.

WHEREAS lately, in the May term of the United States District Court for the Western District of Washington, Northern Division, in a certain matter styled as aforesaid, an order was rendered styled "Order upon Petitions for Review of Robert W. Irwin Company, a corporation, and

Ketcham & Rothschild, Inc., a corporation" against the said Robert W. Irwin Company, a corporation, and the said Robert W. Irwin Company, a corporation, has petitioned for and [207] been allowed by said United States District Court for the District and Division aforesaid on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and a citation has been issued directed to the said Walter S. Osborn, citing him to appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from and after the date of said citation,

NOW, THE CONDITION OF THE ABOVE OBLIGATION is such that if the said Robert W. Irwin Company, a corporation, shall prosecute said appeal to effect and pay all costs if it fails to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Dated at Seattle, Washington, this 25th day of May, 1931.

ROBERT W. IRWIN COMPANY, a Corporation.

By POE, FALKNOR, FALKNOR & EMORY,

As Its Attorneys,

Principal.

AMERICAN BONDING COMPANY OF BALTIMORE.

[Seal—Amer. Bonding Co.]

By W. L. GOZZAM,

Attorney-in-fact,

Surety.

Approved by

BOURQUIN,
District Judge.

[Endorsed]: Filed May 25, 1931. [207½]

[Title of Court and Cause.]

PETITION FOR APPEAL OF KETCHAM & ROTHSCHILD, INC.

To the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court for the Western District of Washington, Northern Division:

1. Heretofore in the above styled matter your petitioner, Ketcham & Rothschild, Inc., a corporation, filed its petition for the reclamation of certain furniture, accounts receivable and proceeds of the sale of said furniture and collections made upon said accounts receivable, which said petition in reclamation was thereafter heard by Ben L. Moore, Esquire, as Referee in Bankruptcy, and was thereafter denied *in toto.*

That thereafter your petitioner sought and obtained a review by the above styled court of said Referee's order so denying its petition in reclamation and said Referee's order was by said court in part reversed and in part affirmed by an order entered in the above styled matter by the Honorable Jeremiah Neterer, one of the Judges of the above-entitled court on the 1st day of May, 1931, which said order is styled "Order Upon Petitions for Review of Robert W. Irwin Company, a cor-

poration, and Ketcham & Rothschild, Inc., a corporation," and which said order is a final judgment or order upon said petition in reclamation of your petitioner, Ketcham & Rothschild, Inc., a corporation.

2. That the final order referred to in the paragraph next preceding this was entered upon a controversy arising [208] in bankruptcy proceedings, which said bankruptcy controversy and proceedings and order so entered on them involved the allowance and rejection of a debt or claim of $500.00 or over within the purview of Sections 24 and 25 of the Bankruptcy Act as Amended May 28th, 1926.

3. Your petitioner, Ketcham & Rothschild, Inc., considering itself aggrieved by that portion of the order of the above styled court entered on May 1st, 1931, denying in part the relief prayed for in its petition in reclamation herein, and relying upon General Order in Bankruptcy No. XXXVI and the applicable statutes, does hereby appeal from said order, and each and every part thereof, denying the relief prayed for in said petition in reclamation to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order in part denying said petition in reclamation of your petitioner was made, duly authenticated, may be sent to the United

States Circuit Court of Appeals for the Ninth Circuit.

WHEREFORE, your petitioner prays for the allowance of an appeal to the Circuit Court of Appeals for the Ninth Circuit, with a direction as to the amount of the cost bond to be fixed upon said appeal.

Dated at Seattle, Washington, this 25 day of May, 1931.

DeWOLFE EMORY,
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner, Ketcham & Rothschild, Inc., a Corporation. [209]

Due service of the foregoing petition for appeal of Ketcham & Rothschild, Inc., together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee.

[Endorsed]: Filed May 25, 1931. [210]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS OF PETITIONER, KETCHAM & ROTHSCHILD, INC., A CORPORATION.

Comes now Ketcham & Rothschild, Inc., a corporation, petitioner in reclamation and appellant herein, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause from

the final order affirming in part and denying in part the relief prayed for in the petition for reclamation of said petitioner, said order being entered in the above styled matter by the above styled court on the 1st day of May, 1931, said appeal being prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit:

1. The Court erred in failing to grant in its entirety the petition of reclamation of Ketcham & Rothschild, Inc., a corporation.

2. The Court erred in holding and finding that the sale of the merchandise included in the bill of sale to petitioner, Ketcham & Rothschild, Inc., executed April 16, 1928, was completed on the date of the execution of the consignment agreement.

3. The Court erred in holding that the bill of sale to Ketcham & Rothschild, Inc., from the bankrupt, executed April 16, 1928, was not timely recorded under Remington's Compiled Statutes, sec. 5827.

4. The Court erred in failing to find that petitioner was entitled to the merchandise described and set forth in [211] the bill of sale executed April 16, 1928.

5. The Court erred in failing to find that said bill of sale was executed for a present and valid consideration and as such did not constitute a preference.

6. The Court erred in failing to find that said bankrupt was at no time insolvent.

7. The Court erred in failing to find and order that petitioner, Ketcham & Rothschild, Inc., a cor-

poration, was entitled to the immediate possession of the cash and moneys, being the proceeds of the sale of certain furniture sold by the bankrupt and by S. T. Hills Company as assignee, which said furniture was covered by the consignment agreement and the bill of sale, which moneys were in the possession of the Trustee at the time of the filing of the petition in reclamation.

8. The Court erred in finding that the contracts and accounts receivable of Renfro-Wadenstein owned by petitioner were negotiated to discount corporations by Renfro-Wadenstein with the knowledge of petitioner.

9. The Court erred in failing to find that the petitioner, Ketcham & Rothschild, Inc., a corporation, was entitled to the immediate possession of all accounts receivable in the hands of the Trustee which were unpaid by the customers of Renfro-Wadenstein, said accounts receivable being collected by Renfro-Wadenstein and S. T. Hills Company, being covered both by said Bill of Sale and by said consignment agreement.

10. The Court erred in refusing to allow petitioner its costs and attorneys' fees as prayed for. [212]

WHEREFORE, Ketcham & Rothschild, Inc., a corporation, petitioner and appellant, prays that said order entered in this cause on the 1st day of May, 1931, upon its petition for review of the Referee's order may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated at Seattle, Washington, this 25 day of May, 1931.

DeWOLFE EMORY,
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner and Appellant, Ketcham & Rothschild, Inc., a Corporation.

Due service of the foregoing assignment of errors of petitioner, Ketcham & Rothschild, Inc., a corporation, together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee.

[Endorsed]: Filed May 25, 1931. [213]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The petition of Ketcham & Rothschild, Inc., a corporation, petitioner in reclamation proceedings in the above matter, for an appeal from the final order denying in part and granting in part said petition in reclamation, entered in this cause on the 1st day of May, 1931, to the Circuit Court of Appeals for the Ninth Circuit, is hereby granted and the appeal is allowed.

Said petitioner's cost bond on said appeal is hereby fixed in the sum of $250.00.

Done in open court this 25 day of May, 1931.

BOURQUIN,
District Judge.

[Endorsed]: Filed May 25, 1931. [214]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Ketcham & Rothschild, Inc., a corporation, as principal, and American Bonding Co. of Baltimore, as surety, are held and firmly bound unto Walter S. Osborn, as Trustee in Bankruptcy of Renfro-Wadenstein, a corporation, and Renfro-Wadenstein Furniture Co., a corporation, bankrupts, in the sum of Two Hundred Fifty and No/100 Dollars ($250.00), to be paid to the said Walter S. Osborn as Trustee in Bankruptcy of Renfro-Wadenstein, a corporation, and Renfro-Wadenstein Furniture Co., a corporation, bankrupts, his successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

SEALED with our seals and dated this 25 day of May, 1931.

WHEREAS lately, in the May term of the United States District Court for the Western District of Washington, Northern Division, in a certain matter styled as aforesaid, an order was rendered styled "Order upon Petitions for Review of Robert W. Irwin Company, a corporation, and Ketcham

& Rothschild, Inc., a corporation," against the said Ketcham & Rothschild, Inc., a corporation, and the said Ketcham & Rothschild, Inc., a corporation, has petitioned for and been allowed by said United States District Court for the [215] District and Division aforesaid an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and a citation has been issued directed to the said Walter S. Osborn, citing him to appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from and after the date of said citation.

NOW, THE CONDITION OF THE ABOVE OBLIGATION is such that if the said Ketcham & Rothschild, Inc., a corporation, shall prosecute said appeal to effect and pay all costs if it fails to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Dated at Seattle, Washington, this 25 day of May, 1931.

KETCHAM & ROTHSCHILD, INC., a Corporation,

By POE, FALKNOR, FALKNOR & EMORY,

As Its Attorneys,

Principal.

AMERICAN BONDING COMPANY OF BALTIMORE,

[Seal American Bonding Co.]

By W. L. GOZZAM,

Attorney-in-fact,

Surety.

Aproved by

BOURQUIN,
District Judge.

[Endorsed]: Filed May 25, 1931. [216]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL TO CIRCUIT COURT OF APPEALS.

To the Honorable GEORGE M. BOURQUIN, District Judge:

W. S. Osborn as the duly qualified and acting trustee of the estate of the above-entitled bankrupts, feeling aggrieved at the portions adverse to him of the order and decree entered by this District Court, Judge Jeremiah Neterer sitting as District Judge, which order was entered after a hearing on review on the petitions of Ketcham & Rothschild, a corporation, and Irwin & Company, a corporation, petitioners, and in so far as said order pertains to the "consignment contracts" in issue and to awards made thereunder, and in so far as said order modifies the order heretofore entered by the Referee in Bankruptcy in this cause, and allows interest on the award, and allows a seven per cent carrying charge on the invoice value of the consigned furniture, and in so far as said order disallows the trustee's costs herein, therefore the trustee does hereby appeal from the portions of the aforesaid order and decree adverse to petitioner trustee as above referred to, such appeal being to the United

States Circuit Court of Appeals for the Ninth Circuit and your petitioner prays that his appeal be allowed, and that citation be issued as provided by law, and that a transcript of the records, proceedings and documents upon which said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals [217] for the Ninth Circuit under the rules of said court in such cases made and provided, and that this appeal be allowed without the requirement of any bond or security of this appellant trustee, under the rules as to appeals by a Trustee, 11 U. S. C. A., Par. 48, 43 Statutes, 936, 941.

W. S. OSBORN,
Trustee, Appellant.
By D. G. EGGERMAN,
EDW. L. ROSLING,
Solicitors for Appellant Trustee.

ORDER ALLOWING APPEAL.

Appeal allowed this 25th day of May, 1931, to W. S. Osborn, Trustee of the estate of the above-entitled bankrupts, without requirement of any bond.

BOURQUIN,
Judge.

Copy received May 25, 1931.
POE, FALUKNOR, FAULKNOR & EMORY,
Attys. for Petitioner.

[Endorsed]: Filed May 25, 1931. [218]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes W. S. Osborn, Trustee in Bankruptcy of the above-named bankrupt, and herewith enters his assignment of errors on appeal from that portion of the judgment of the above-entitled court which judgment was dated May 1, 1931, modifying the decision of the Referee in Bankruptcy herein on the petitions of Ketcham & Roth*c*hild and Irwin & Co. respectively, and assigns error as follows:

1. That the court erred in declaring the contract dated March 30, 1928 signed by Ketcham & Roth*c*hild and Renfro-Wadenstein, bankrupt, a contract of consignment.

2. That the court erred in declaring that the contract between Irwin & Co. and bankrupt, captioned consignment contract, and referred to in Paragraph I of the court's order is a contract of consignment.

3. That the court erred in holding that any furniture of petitioner Ketcham & Roth*c*hild was held under consignment arrangement with the bankrupt.

4. That the court erred in holding that any furniture of petitioner Irwin & Co. was held by the bankrupt under a consignment arrangement.

5. That the court erred in Paragraph I of its order in awarding judgment against the trustee on account of any furniture held by the bankrupt

and shipped by petitioners or [219] either of them to the bankrupt.

6. That the court erred in awarding petitioners or either of them interest on the award made petitioners in Paragraph I of the court's order and computed on the basis of proceeds of the sale of the furniture.

7. That the court erred in Paragraph III of its order in allowing a 7% carrying charge or any carrying charge to petitioners or either of them.

8. That the court erred in failing to allow to the trustee his costs taxable herein.

9. That the court erred in holding that no actual fraud was shown against petitioners within the state insolvency laws or at all.

10. That the court erred in deciding that petitioners acted in good faith in entering into the contracts referred to in Paragraphs I and II of this assignment of errors.

11. That error was committed in admitting into evidence and/or considering the letter dated March 23, 1928, written by Renfro-Wadenstein attached to Irwin's deposition as Exhibit 26 and introduced as a portion of Petitioners' Exhibit 1, for the reason as stated in the objection of the Trustee to its introduction, first that the contract of alleged consignment is from its terms complete and is executed on the date shown thereon, and is the subject of the petition in reclamation specially pleaded and the issues were made up upon the contract and without any modification or attempt at modification by a subsequent letter. That the letter provides that Renfro-Wadenstein will furnish shortly after the

first of the month an inventory of the Irwin Company's merchandise on hand and will also furnish a bill of sale which will act as a transfer back to Ketcham & Rot*h*child of the merchandise [220] and that any difference in the amount of the account will be taken care of in three equal payments, thirty, sixty and ninety days. That said letter was objected to for the further reason that any letter written by the bankrupt construing or attempting to construe the purport of the alleged consignment contract would be wholly incompetent and would be a construction of one party as to the terms of a written contract.

12. That the referee erred in entering that portion of Finding of Fact No. 7 which recites "(b) a letter (Irwin's Ex. 26) addressed to Robert W. Irwin Co., dated March 23, 1928, referring to said so-called consignment agreement, and particularly to Paragraph IX thereof."

13. That the court erred in entering that portion of Finding of Fact No. 8 con*y*ained in the second paragraph of said finding.

14. That the Referee erred in entering Finding of Fact No. 20.

15. That the referee erred in entering that portion of Finding of Fact No. 43 as follows: "and the letter dated March 23, 1928."

WHEREFORE the Trustee prays for a reversal of the above-mentioned order in so far as adverse to him.

W. S. OSBORN,
Trustee in Bankruptcy of Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Co., a Corporation, Bankrupt.
By D. G. EGGERMAN,
EDW. L. ROSLING,
Solicitors for Trustee.

Copy received May 25, 1931.
POE, FAULKNOR, FAULKNOR & EMORY,
Attys. for Petitioners.

[Endorsed]: Filed May 25, 1931. [221]

[Title of Court and Cause.]

STIPULATION AS TO TRUSTEE'S ASSIGNMENT OF ERROR.

In accordance with the stipulation as to statement of evidence on appeal and in which the only summary of objections noted is as to the letter from Renfro-Wadenstein to Ketcham & Rothschild, part of Petitioners' Exhibit 1,—

IT IS HEREBY STIPULATED AND AGREED by and between Poe, Falknor, Falknor & Emory, attorneys for appellants Ketcham & Rothschild and Irwin & Company and Eggerman & Rosling, attorneys for appellant Trustee, that Paragraph II of the trustee's assignment of error be deemed amended to read as follows:

"That error was committed in admitting into evidence and/or considering the letter dated March 23, 1928, signed by Renfro-Wadenstein and introduced as a portion of Petitioners' Exhibit 1 as follows:

March 23, 1928.

'Ketcham & Rothschild, Inc.
330 East Ohio Street,
Chicago, Illinois.

Gentlemen:

Referring to the attached memorandum of agreement:

It is our understanding that we are to furnish, shortly after the first of the month, an inventory of all of your merchandise on hand:

That we also, are to furnish bill of sale which will act as a transfer back to your company of this merchandise, and that any difference in the amount of the account will be taken care of in three (3) equal payments; thirty, sixty and ninety days.

This refers in particular to Paragraph 9. [222]

Yours very truly,
RENFRO-WADENSTEIN.
O. A. WADENSTEIN.

OAW:G'

for the reason as stated in the objection of the trustee to its introduction: First, that the contract of alleged consignment is from its terms complete and is executed on the date shown thereon and is the subject of the petition in reclamation specially pleaded and the

issues were made up upon the contract and without any modification or attempted modification by subsequent letter; and for the further reason that any letter written by the bankrupt construing or attempting to construe the purport of the alleged consignment contract would be wholly incompetent and would be a construction of one party as to the terms of a written contract."

IT IS FURTHER STIPULATED AND AGREED that this stipulation shall be considered a part of the records to be transmitted by the Clerk of the United States District Court for the Western District of Washington, Northern Division, to the United States Circuit Court of Appeals for the Ninth Circuit in this cause.

Dated this 10 day of June, 1931.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Ketcham & Rothschild and Irwin & Company.

EGGERMAN & ROSLING,
Solicitors for Trustee.

The above stipulation approved this —— day of June, 1931.

_____,
Judge.

[Endorsed]: Filed Jun. 15, 1931. [223]

[Title of Court and Cause.]

STIPULATION AS TO STATEMENT OF EVIDENCE ON APPEAL.

IT IS HEREBY STIPULATED AND AGREED by and between Poe, Falknor, Falknor & Emory, solicitors for appellants Ketcham & Rothschild, Inc., and Irwin & Company, a corporation, respectively, and Eggerman & Rosling, solicitors for appellant Trustee W. S. Osborn, Esq., that the summary of evidence contained in the certificate on review of the Honorable Ben L. Moore, Referee in Bankruptcy, and on file in this proceeding together with all exhibits thereto attached, shall be considered for the purposes of all appeals herein to the United States Circuit Court of Appeals for the Ninth Circuit, a statement of the evidence in this proceeding.

IT IS HEREBY FURTHER STIPULATED AND AGREED that the following summary of objections made by the Trustee and of testimony heard by the Referee in Bankruptcy concerning such objections may be considered as a part of the summary of evidence herein, subject to the reservation of all rights of appellants or either of them to object to the consideration of such additional testimony and objections by the United States Circuit Court of Appeals.

Petitioners' Exhibit 1 consisted in part of a letter directed to Ketcham & Rothschild and signed by Renfro-Wadenstein which stated as follows:

"Referring to the attached memorandum of agreement, it is our understanding we [224] are

to furnish shortly after the first of the month, an inventory of all of your merchandise on hand; that we also are to furnish a bill of sale which will act as a transfer back to your company of this merchandise and that any difference in the amount of the account will be taken care of in three equal payments, thirty, sixty and ninety days. This refers in particular to Paragraph 9."

This letter was dated March 23, 1928. The testimony and objections relative to the introduction of said letter in evidence were as follows:

(Mr. Rothschild testifying, Mr. Emory examining.)

"Petitioners' Exhibit 1 for identification, purporting to be consignment contract entered into between Ketcham & Rothschild and Renfro-Wadenstein Company on the 30th of March, 1928, and the attached letter constitute an agreement that was entered into between Renfro-Wadenstein and myself for our company, and a similar one for their company, and signed by Mr. Wadenstein. It was given to me on the 23rd of March, 1928.

Mr. EMORY.—We offer this in evidence.

Mr. EGGERMAN.—(On behalf of trustee.) We object if your Honor please, to the attachment of this letter for two reasons:

In the first place, the contract is from its terms complete and is executed on the date shown thereon and is the subject of this petition in intervention, specially pleaded, and the issues are made up upon the contract, and without any modification, or attempted modification, by a subsequent letter, and for the second reason that any letter written by the

bankrupt construing or attempting to construe the purport of this contract would be wholly incompetent.

We have no objection to the contract itself, but we strenuously object to the introduction of any letter of construction by the bankrupt.

Mr. EMORY.—I would like to withdraw that offer for just a minute, your Honor, and make a little more proof with reference to this letter.

You have identified this letter of March 23, 1928, reading as follows? (Mr. Emory reads [225] the letter as set forth above.) I will ask you at whose instance this letter of March 23, was written?

Mr. EGGERMAN.—I object to that as immaterial; the contract is sufficient.

The COURT.—He may answer.

Mr. EGGERMAN.—Exception.

Mr. ROTHSCHILD.—It was at my instigation. I asked for it.

Q. Why did you ask for it?

Mr. EGGERMAN.—Same objection.

The COURT.—Objection overruled.

A. At the advice of counsel. I had submitted a draft of a tentative consignment arrangement to counsel in Seattle and they looked it over carefully, apparently could find no objection to its clauses.

Mr. EGGERMAN.—I object to all of that.

The COURT.—Yes, I don't think that is necessary.

Mr. EMORY.—You may omit about finding no objection.

A. They suggested that in order to make a contract of that nature complete, it would have to have

a provision whereby it would state definitely when they would give us a bill of sale, and how they would pay for any difference that might be occurred, and when I found that omitted in the contract as submitted to me by Mr. Wadenstein, I asked him to cover it in the form of a letter.

Q. With reference to this notation in the letter which states: 'This refers in particular to Paragraph 9,' at whose instance was that put in the letter?

Mr. EGGERMAN.—Same objection.

The COURT.—Objection overruled.

A. That particular line I suggested his putting in.

Q. And why did you suggest that that reference to Paragraph 9 be put in?

Mr. EGGERMAN.—Same objection.

The COURT.—Same ruling. [226]

A. Because Paragraph 9 recited that they would make a bill of sale to us of what merchandise—rather, they would return to us merchandise they had on hand, and I thot it should be made very plain that this bill of sale they were going to give us referred to that particular clause in the contract.

The letter and the contract were signed by Renfro-Wadenstein at the same time. I made a request of Renfro-Wadenstein prior to the time Renfro-Wadenstein gave this letter to me that the matters which are incorporated in this letter be inserted in the agreement. I had given them a memorandum attached to the draft that I wished, which included such provision, but which they did not include in the contract which they submitted to me. The draft I gave them of the agreement which would be agree-

able to us had attached to it a memo of omissions they had apparently made—apparently overlooked in drawing the contract. Mr. Wadenstein stated he had overlooked the memo in drawing the contract (objected to by Mr. Eggerman; objection overruled; exception noted).

Mr. Emory then asked: And the purpose of the letter was what? (This question was objected to by the Trustee.)

Mr. EMORY.—I think we have the right to show the purpose of this letter was to amend this contract.

The COURT.—Well, he certainly covered that by his testimony already.

A. Paragraph 9 of the consignment agreement recites that the party of the second part—that is, bankrupt—now has in his possession certain goods as per attached list. There was no attached list to the consignment agreement. I took this contract back East with me. I did not sign it up here for my firm. There was at no time any inventory of goods attached to this assignment agreement.

Mr. EMORY.—We offer the contract in evidence.

Mr. EGGERMAN.—We reiterate our objection to this letter and ask leave to ask the witness two or three questions.

(Witness questioned by referee: The letter is dated March 23; the date of the contract is March 30. The letter was attached to the contract and has at all times been attached to the contract since.)

(Witness examined by Mr. EGGERMAN.)

A. The contract was signed in my presence and the date was left blank. They actually signed the

contract [227] on March 23. My firm signed it in Chicago the 30th. The words '30th of March, 1928' were inserted in the handwriting of J. W. Rothschild. There is only one consignment contract in this case and that is all I signed and I signed that without any modification, without any reservations. We at all times considered the letter part of the contract. The contract does not bear on its face that it is a complete contract by my firm and the bankrupt.

I did not write a letter to the bankrupt in response to the letter offered in evidence.

(Whereupon the offer was renewed by petitioner; objection was *renewed Trustee;* and the exhibit was admitted as Petitioner's Exhibit 1 in evidence; Trustee requested an exception.)

(The COURT.—I'll let you present any authorities you may have in the argument why it should not be considered.)

Dated this 10 day of June, 1931.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Ketcham & Rothschild, Inc., and Irwin & Co.

EGGERMAN & ROSLING,
Solicitors for Trustee.

The above stipulation approved this 26th day of June, 1931.

_____,
Judge.

[Endorsed]: Filed Jun. 15, 1931. [228]

[Title of Court and Cause.]

ORDER FIXING STATEMENT OF EVIDENCE.

It appearing that the parties to the proceedings in which Ketchem & Rothschild and Irwin & Co. are petitioners for reclamation have heretofore entered into a stipulation concerning the statement of evidence herein, and said stipulation having been considered by this Court, and it appearing that the objections of the Trustee to the letter of Renfro-Wadenstein to Ketcham & Rothschild, dated March 23, 1928, were not incorporated in the Referee's Certificate on Review, but that the original abstract of testimony was transmitted with the Certificate on Review to the Clerk of the above-entitled court, and contained the testimony and proceedings as recited in said stipulation,—

NOW, THEREFORE, IT IS HEREBY ORDERED, that the summary of evidence contained in certificate of review of the Hon. Ben L. Moore, Referee in Bankruptcy, be and it is hereby fixed as a statement of evidence on appeal from the order of the above-entitled court to the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 2d day of July, 1931.

JEREMIAH NETERER,
Judge.

OK.—POE, FALKNOR, FALKNOR & EMORY,
For Petitioners.

Presented by:

W. S. GREATHOUSE,
EGGERMAN & ROSLING,

[Endorsed]: Filed Jul. 2, 1931. [229]

[Title of Court and Cause.]

STIPULATION WAIVING SUPERSEDEAS BOND.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for Walter S. Osborn, Trustee in Bankruptcy of Renfro-Wadenstein, a corporation, and Renfro-Wadenstein Furniture Co., a corporation, bankrupts above named, and Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, petitioners in reclamation herein, all of the parties hereto being appellants to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment entered by the above styled court on the 1st day of May, 1931, upon the petitions in reclamation of said petitioners, that upon said appeals it will not be necessary for either of the parties hereto to execute or file a supersedeas bond and that neither party hereto will enforce the execution of said judgment or any right given any party hereto thereunder until said appeals have been finally determined by said United States Circuit Court of Appeals for the Ninth Circuit and that until said time the moneys not held by said Trustee under stip-

ulation to await the outsome of said petitions in reclamation shall be kept intact by him.

Dated at Seattle, Washington, this 3 day of June, 1931.

EGGERMAN & ROSLING,
Attorneys for Walter S. Osborn, Trustee in Bankruptcy.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Ketcham & Rothschild, Inc., a Corporation.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Robert W. Irwin Company, a Corporation.

[Endorsed]: Filed Jun. 4, 1931. [230]

[Title of Court and Cause.]

STIPULATION CONSOLIDATING APPEALS AND PROVIDING FOR ONE TRANSCRIPT OF RECORD.

An appeal having been taken by the Trustee of the above-entitled estate, W. S. Osborn, Esq., from the order of Honorable Jeremiah Neterer, District Judge, on the petitions of Ketcham & Rothschild, Inc., and Robert W. Irwin Company, and said petitioners having cross-appealed separately from the aforesaid order, and said reclamation proceedings having been consolidated for hearing heretofore before the Referee in Bankruptcy and before the above-entitled court,—

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Poe, Falknor, Falknor & Emory, solicitors for petitioners Ketcham & Rothschild, Inc., and Irwin & Company, respectively, and Eggerman & Rosling, solicitors for W. S. Osborn as Trustee of the above-entitled estate, that the cross-appeal of Ketcham & Rothschild and Irwin & Company may be consolidated and heard in conjunction with the appeal of the Trustee herein before the United States Circuit Court of Appeals for the Ninth Circuit.

AND IT IS FURTHER STIPULATED AND AGREED that under Section 1083 of Revised Statutes of the United States (28 U. S. C. A. 864), one transcript of record shall be sufficient on the above-mentioned appeals, and that such record, when prepared from the combined praecipes of appellant and of cross-appellant, without duplication, by the Clerk of the above-entitled court, may be [231] used on all appeals herein mentioned and that appellants and each cross-appellant may be heard thereon in the same manner as if records had been filed in each appeal.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Ketcham & Rothschild, Inc., and Robert W. Irwin & Company, Petitioners.

EGGERMAN & ROSLING,
Solicitors for Trustee.

[Endorsed]: Filed Jun. 2, 1931. [232]

[Title of Court and Cause.]

ORDER AUTHORIZING CLERK TO TRANSMIT EXHIBITS.

It appearing that an appeal has been taken by the Trustee of the above-entitled estate from the order entered by the above-entitled court, on the petition of Ketcham and Rothschild, and Irwin & Co., respectively, and that petitioners have cross-appealed from said order, such appeals having been taken to the United States Circuit Court of Appeals for the Ninth Circuit, and it further appearing that the praecipes of the Trustee and of petitioners request the original exhibits, and it appearing that said exhibits are many in number and involve audits which cannot be readily reproduced, and that a transfer of said original exhibits to the Clerk of the United States Circuit of Appeals for the Ninth Circuit is proper under the circumstances,—

Now, therefore, IT IS HEREBY ORDERED that the Clerk of the above-entitled court be and he is hereby authorized to transmit all exhibits introduced before the Referee on hearings upon the petitions of Ketcham & Rothschild, and Renfro-Wadenstein, respectively, which includes Petitioners' 1 to 56, inclusive, together with the exhibits attached to Irwin's deposition, entered as exhibit 55, together with Trustee's Exhibits "A" to "Q," inclusive, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 26th day of June, 1931.

JEREMIAH NETERER,
Judge.

Presented by:

W. S. GREATHOUSE,
Of EGGERMAN & ROSLING.

[Endorsed]: Filed Jun. 26, 1931. [233]

[Title of Court and Cause.]

PRAECIPE OF ROBERT W. IRWIN COMPANY FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause, and to include in such transcript of record the following, and no other, papers and exhibits:

1. Petition for reclamation of Robert W. Irwin Company (filed November 17, 1928, and attached to Referee's certificate), together with exhibits thereto attached.
2. Answer of Trustee to petition for reclamation of Robert W. Irwin Company (filed January 9, 1929, and attached to Referee's Certificate).
3. Reply of Robert W. Irwin Company to answer of Trustee (filed December 19, 1928, and attached to Referee's Certificate).
4. Order of Ben L. Moore, Esquire, as Referee in Bankruptcy on claim of petitioner, Robert

W. Irwin Company (filed May 2, 1930, and attached to Referee's Certificate).

5. Exceptions of Robert W. Irwin Company to findings of Referee (filed May 2, 1930, and attached to Referee's Certificate).
6. Petition of Robert W. Irwin Company for review of Referee's order (filed May 3, 1930, and attached to Referee's Certificate), together with exhibit thereto attached.
7. Stipulation as to merchandise and accounts receivable and proceeds thereof, claimed by Ketcham & Rothschild, Inc., and Robert W. Irwin Company (filed December 5, 1928, and attached to Referee's Certificate). [234]
8. Referee's memorandum decision attached to Referee's Certificate.
9. Referee's certificate on review.
10. Decision of District Court (filed February 5, 1931).
11. Cost bill of petitioners, Robert W. Irwin Company and Ketcham & Rothschild, Inc. (filed May 1, 1931).
12. Order upon petitions for review (filed May 1, 1931, and signed by Jeremiah Neterer, District Judge).
13. Proposed order upon petitions for review (filed without signing May 1st, 1931).
14. Petition for appeal of Robert W. Irwin Company (filed herewith).
15. Order allowing appeal of Robert W. Irwin Company (filed herewith).
16. Citation on appeal of Robert W. Irwin Company (filed herewith).

17. Bond on appeal of Robert W. Irwin Company (filed herewith).
18. This praecipe.
19. Statement of evidence on appeal (hereafter to be filed and settled).
20. Exhibits (original exhibits requested):
    (a) Petitioner's Exhibit 55, being deposition of Robert W. Irwin, and exhibits attached thereto.
    (b) Petitioner's Exhibit 1, being letter of March 23d from Renfro-Wadenstein, and particularly petitioner's exhibits thereto attached, numbered and described as follows:
        (1) Petitioner's Exhibit 26, being letter of March 23, 1928, from Renfro-Wadenstein to Robert W. Irwin Company.
        (2) Petitioner's Exhibit 27, being petition of Robert W. Irwin Company.
        (3) Consignment agreement dated April 1, 1928.
        (4) Petitioner's Exhibit 28 (being bill of sale dated August 6, 1928). [235]
    (c) Petitioner's Exhibit 48, being a statement of merchandise headed "Royal Division."
    (d) Petitioner's Exhibit 50, being Smith, Robertson & Company's report on disposition of merchandise.

(e) Petitioner's Exhibit 51, being balances of accounts receivable containing charges for consigned merchandise.

(f) Petitioner's Exhibit 52, being list of furniture, accounts receivable and proceeds of sale of furniture collected by Trustee claimed by Ketcham & Rothschild and Robert W. Irwin Company.

(g) Petitioner's Exhibit 53, being comparison and reconciliation of inventory of Smith, Robertson & Company and S. T. Hills Company.

(h) Petitioner's Exhibit 54, being balance sheet of Renfro-Wadenstein.

Said transcript to be prepared as required by law and the rules of this court and the Circuit Court of Appeals for the Ninth Circuit and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the 25 day of June, 1931.

DeWOLFE EMORY,
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner and Appellant, Robert W. Irwin Company.

Due service of the foregoing praecipe, together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee.

[Endorsed]: Filed May 25, 1931. [236]

[Title of Court and Cause.]

PRAECIPE OF KETCHAM & ROTHSCHILD, INC., FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause, and to include in such transcript of record the following, and no other, papers and exhibits:

1. Petition for reclamation of Ketcham & Rothschild, Inc. (filed November 17, 1928, and attached to Referee's Certificate), together with exhibits thereto attached.
2. Answer of Trustee to petition for reclamation of Ketcham & Rothschild, Inc. (filed January 9, 1929, and attached to Referee's Certificate).
3. Reply of Ketcham & Rothschild, Inc., to answer of Trustee (filed December 19, 1928, and attached to Referee's Certificate).
4. Order of Ben L. Moore, Esquire, as Referee in Bankruptcy, on claim of petitioner, Ketcham & Rothschild, Inc., filed May 2, 1930, and attached to Referee's Certificate).
5. Exceptions of Ketcham & Rothschild, Inc., to Findings of Referee (filed May 2, 1930, and attached to Referee's Certificate).

6. Petition of Ketcham & Rothschild, Inc., for review of Referee's Order (filed May 3, 1930, and attached to Referee's Certificate), together with exhibit thereto attached.
7. Stipulation as to merchandise and accounts receivable and proceeds thereof claimed by Ketcham & Rothschild, Inc., and Robert W. Irwin Company (filed December 5, 1928, and attached to Referee's Certificate). [237]
8. Referee's memorandum decision attached to Referee's Certificate.
9. Referee's certificate on review.
10. Decision of District Court (filed February 5, 1931).
11. Cost bill of petitioners, Ketcham & Rothschild, Inc., and Robert W. Irwin Company (filed May 1, 1931).
12. Order upon petitions for review (filed May 1, 1931, and signed by Jeremiah Neterer, District Judge).
13. Proposed order upon petitions for review (filed without signing May 1, 1931).
14. Petition for appeal of Ketcham & Rothschild, Inc. (filed herewith).
15. Order allowing appeal of Ketcham & Rothschild, Inc. (filed herewith).
16. Citation on appeal of Ketcham & Rothschild, Inc. (filed herewith).
17. Bond on appeal of Ketcham & Rothschild, Inc. (filed herewith).
18. This praecipe.

19. Statement of evidence on appeal (hereafter to be filed and settled).
20. Exhibits (original exhibits requested);
    (a) Petitioner's Exhibit 1, being letter of March 23d from Renfro-Wadenstein to Ketcham & Rothschild, Inc.
    (b) Petitioner's Exhibit 2, being consignment agreement dated March 30th, 1928.
    (c) Petitioner's exhibit unnumbered, being bill of sale dated April 16, 1928.
    (d) Petitioner's Exhibit 3, being special account invoices.
    (e) Petitioner's Exhibit 4, being letter from Renfro-Wadenstein to Ketcham & Rothschild, Inc., and attached statements.
    (f) Petitioner's Exhibit 6, being photostatic copy of ledger. [238]
    (g) Petitioner's Exhibit 7, being two photostatic copies of bills receivable ledger.
    (h) Petitioner's Exhibit 9, being photostatic copy of consignment sales ledger.
    (i) Petitioner's Exhibit 10, being photostatic copy of ledger.
    (j) Petitioner's Exhibit 11, being duplicates of original direct charge invoices.
    (k) Petitioner's Exhibit 12, being photostatic copy of special account ledger.
    (l) Petitioner's Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38 and 39.
    (m) Petitioner's Exhibit 50, being Smith,

Robertson & Company's report on disposition of merchandise.

(n) Petitioner's Exhibit 51, being balances of accounts receivable containing charges for consigned merchandise.

(o) Petitioner's Exhibit 52, being list of furniture, accounts receivable and proceeds of sale of furniture collected by Trustee, claimed by Ketcham & Rothschild, Inc., and Robert W. Irwin Company.

(p) Petitioner's Exhibit 53, being comparison and reconciliation of inventory of Smith, Robertson & Company and S. T. Hills Company.

(q) Petitioner's Exhibit 54, being balance sheet of Renfro-Wadenstein.

Said transcript to be prepared as required by law and the rules of this Court and the Circuit Court of Appeals for the Ninth Circuit and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the 25 day of June, 1931.

DeWOLFE EMORY,
POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Petitioner and Appellant, Ketcham & Rothschild, Inc. [239]

Due service of the foregoing praecipe, together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee.

[Endorsed]: Filed May 25, 1931. [240]

[Title of Court and Cause.]

PRAECIPE OF TRUSTEE ON APPEAL AND COUNTER-PRAECIPE OF TRUSTEE ON PETITIONER'S CROSS-APPEAL.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed in the above-entitled proceedings, and to include in such transcript of record the following papers and exhibits (where paper or exhibit is included in petitioner's praecipe on cross-appeal, such will be indicated by a small "c" after the number).

1(c) Petition for reclamation of Ketcham & Rothschild, Inc., together with exhibits thereto attached.

2(c) Answer of Trustee to petition for reclamation of Ketcham & Rothschild, Inc.

3(c) Reply of Ketcham & Rothschild, Inc., to answer of Trustee.

4(c) Petition for reclamation of Robert W. Irwin Company.

5(c) Answer of Trustee to petition for reclamation of Robert W. Irwin Company.

6(c) Reply of Robert W. Irwin Company to answer of Trustee.

7(c) Order of Ben L. Moore, Esq., as Referee in Bankruptcy, denying claim of petitioner Robert W. Irwin Company.

8(c) Order of Ben L. Moore, Esq., as Referee in [241] Bankruptcy, denying claim of petitioner Ketcham & Rothschild, Inc.

9 Exceptions of trustee to findings of Referee.

10(c) Memorandum decision of Ben L. Moore, Esq., Referee in Bankruptcy on the petition of Ketcham & Rothschild, Inc., and Irwin & Company.

11(c) Stipulation as to merchandise, accounts receivable and proceeds thereof, claimed by Ketcham & Rothschild, Inc., and Robert W. Irwin Company.

12(c) Referee's certificate on review including summary of evidence, findings of fact, conclusions of law and questions presented on review.

13(c) Order upon petition for review, filed May 1, 1931, and signed by Honorable Jeremiah Neterer, District Judge, and memorandum decision of Judge Neterer.

14 Cost bill of Trustee.

15 Petition for appeal of W. S. Osborn, Trustee, together with order allowing appeal attached to said petition.

16 Citation on appeal of W. S. Osborn, Trustee, with acknowledgment of service thereon.

17 This praecipe.

18 Statement of evidence on appeal or stipulation as to statement of evidence (whichever is hereafter filed and settled).

19 Stipulation as to consolidation of appeals (to be filed hereafter).

20 Stipulation as to supersedeas (to be filed hereafter).

21 Exhibits (original exhibits requested): (a) Trustee's Exhibit "A," letter of Renfro-Wadenstein to Ketcham & Rothschild, dated March 11, 1927, and letter of Ketcham & Rothschild to Renfro-Wadenstein, dated March 22, 1927;

(b) Trustee's Exhibit "B": Invoices with bills of lading attached, invoice dated 10/20/27, bill of lading dated [242] 10/20/27, invoice dated 10/24/27, bill of lading dated 8/1/28.

(c) Trustee's Exhibit "C": Bill of Ketcham & Rothschild, dated August 1, 1928, and Renfro-Wadenstein's letter to Ketcham & Rothschild of September 12, 1928.

(d) Trustee's Exhibit "D": Statements of Ketcham & Rothschild, dated November 1, 1927, December 1, 1927, January 1, 1928, and February 1, 1928, made to Renfro-Wadenstein.

(e) Trustee's Exhibit "E": Letter of Robert W. Irwin Company to Renfro-Wadenstein dated April 18, 1927.

(f) Trustee's Exhibit "F": Letter of Johnson, Handley, Johnson Company, dated January 25, 1928, to Renfro-Wadenstein.

(g) Trustee's Exhibit "G": Invoice dated May 28, 1928, from Ketcham & Rothschild to Renfro-Wadenstein together with remittance sheet.

(h) Trustee's Exhibit "H": Invoice of July 31, 1928, from Ketcham & Rothschild to Renfro-Wadenstein.

(i) Letter dated August 24, 1928, from Renfro-Wadenstein to Ketcham & Rothschild.

(j) Trustee's Exhibit "J": Letters of Renfro-Wadenstein to Robert W. Irwin Company, dated March 6, 1928, February 13, 1928, and December 30, 1927, respectively.

(k) Trustee's Exhibit "K": Sheet purporting to be report of sales from Renfro-Wadenstein to Irwin Company.

COUNTER-PRAECIPE OF TRUSTEE ON CROSS-APPEAL OF PETITIONERS.

To the Clerk of the Above-entitled Court:

You are hereby requested to add to the transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to a cross-appeal allowed to petitioners, Ketcham & Rothschild and Irwin & Company, in the [243] above-entitled proceedings and to include in such transcript of record the following exhibits:

a. Trustee's Exhibits "K" and "L": Being S. T. Hill's audit.

b. Trustee's Exhibit "M": Part of S. T. Hill's audit.

c. Trustee's Exhibit "N": Part of S. T. Hill's audit and relating to Robert W. Irwin Company merchandise. Trustee's Exhibit "O" and "P," "Reconciliation," part of S. T. Hill's audit.

d. Trustee's Exhibit "Q": Part of S. T. Hill's audit.

You are requested to prepare said transcript as required by law and the rules of this court and the Circuit Court of Appeals for the Ninth Circuit and to have *have* said transcript filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the 24th day of June, 1931.

EGGERMAN & ROSLING,
D. G. EGGERMAN,
EDW. L. ROSLING,
Solicitors for Trustee, W. S. Osborn.

Due service of the foregoing praecipe and counter-praecipe admitted, and receipt of copy acknowledged this 29th day of May, 1931, on behalf of each of appellees and cross-appellants.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Ketcham & Rothschild, Inc., and Robert W. Irwin Company.

[Endorsed]: Filed May 29, 1931. [244]

[Title of Court and Cause.]

SUPPLEMENTAL PRAECIPE OF TRUSTEE ON APPEAL.

To the Clerk of the Above-entitled Court:

Supplementing Trustee's original praecipe on appeal you are hereby requested to include in the transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth

Circuit, in addition to the papers and exhibits requested in the original praecipe, the following:

22. Trustee's assignment of errors.

23. Stipulation amending assignment of errors of trustee.

24. Stipulation as to statement of evidence.

25. District Court's order fixing statement of evidence entered July 2, 1931.

26. Order consolidating appeals and providing for one record.

You are requested to prepare said transcript including the above documents as required by law and the rules of this court and the Circuit Court of Appeals of the Ninth Circuit and to have said transcript filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the 24th day of July, 1931.

EGGERMAN & ROSLING,
D. E. EGGERMAN,
EDW. L. ROSLING,
Solicitors for Trustee, W. S. Osborn. [245]

Due service of the foregoing supplemental praecipe admitted and receipt of copy acknowledged this 10th day of July, 1931, on behalf of Ketcham & Rothschild and Irwin and Company, respectively.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Ketcham & Rothschild and Irwin & Co.

[Endorsed]: Filed Jul. 10, 1931. [246]

[Title of Court and Cause.]

SUPPLEMENTAL PRAECIPE OF PETITIONERS AND CROSS-APPELLANTS, ROBERT W. IRWIN COMPANY AND KETCHAM & ROTHSCHILD, INC.

Come now Robert W. Irwin Company and Ketcham & Rothschild, Inc., petitioners and cross-appellants herein and request that their separate praecipe heretofore filed herein be supplemented by the addition thereto of the following papers and documents.

1. Assignment of errors of Robert W. Irwin Company in appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

2. Assignment of errors of Ketcham & Rothschild, Inc., on appeal to the United States *Circuit of* Appeals for the Ninth Circuit.

Dated at Seattle, Washington, this 13th day of July, 1931.

POE, FALKNOR, FALKNOR & EMORY,
Attorneys for Robert W. Irwin Company and Ketcham & Rothschild, Inc., Petitioners and Cross-appellants.

Due service of the foregoing supplemental praecipe of petitioners and cross-appellants, Robert W. Irwin Company and Ketcham & Rothschild, Inc., together with the receipt of a true copy thereof, is

hereby acknowledged this 13th day of July, 1931.

EGGERMAN & ROSLING,

Attorneys for Walter S. Osborn, as Trustee in Bankruptcy.

[Endorsed]: Filed July 14, 1931. [247]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that this typewritten transcript of record, consisting of pages numbered from No. 1 to No. 247, inclusive, *to a* full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true, and correct statement of all expense, costs, fees and charges incurred in my office by or on behalf

of the appellant and cross-appellants, for making record, certificate or return to the United States Circuit [248] Court of Appeals for the Ninth Circuit in the foregoing cause to wit:

Clerk's fees (Act of Feb. 11, 1925) for making record, certificate or return 722 folios at 15¢	$108.30
Certificate of Clerk to Transcript of record with seal	.50
Petition for Appeal of Robert W. Irwin Company, a corporation	5.00
Petition for Appeal of Ketchum & Rothschild, Inc., a corporation	5.00
Petition for Appeal of W. S. Osborn, Trustee of the Estate of the Bankrupt	5.00
Certificate of the Clerk to the original exhibits with seal	.50
Total	$124.30

I hereby certify that the above costs for preparing and certifying record, amounting to $124.30 has been paid to me as follows, viz:

By Geo. W. Irwin Company a corporation,	$ 32.33
By Ketcham & Rothschild, Inc., a corporation	32.32
By W. S. Osborn, Trustee of the Estate of the Bankrupt,	59.65
Total	$124.30

I further certify that I attach hereto and transmit the original citation of Robert W. Irwin Com-

pany, a corporation, the original citation of Ketchum & Rothschild Inc., a corporation and the original citation of W. S. Osborn, Trustee of the Estate of the Bankrupt, each of which were issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 17th day of July, 1931.

[Seal] ED. M. LAKIN,
Clerk of the United States District Court, Western District of Washington.

By E. W. Pettit,
Deputy. [249]

[Endorsed]: Filed May 25, 1931.

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,
Western District of Washington,
Northern Division,—ss.

To Walter S. Osborn, as Trustee in Bankruptcy for Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Co., a Corporation, Bankrupts and Appellees, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an order allow-

ing an appeal from the District Court of the United States for the Western District of Washington, Northern Division, in a certain matter styled as above, wherein Ketcham & Rothschild, Inc., a corporation, is appellant, and you are appellee, to show cause, if any there be, why said order upon petitions for review of Ketcham & Rothschild, Inc., a corporation, and Robert W. Irwin Company, a corporation, entered in the above styled cause by the above court on May 1st, 1931, rendered against the said Ketcham & Rothschild, Inc., a corporation, should not be corrected and why speedy justice should not be done to the petitioner in that behalf.

WITNESS the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court for the Western District of Washington, Northern Division, this 25 day of May, 1931, and in the One Hundred Fifty-fifth year of the Independence of the United States of America.

BOURQUIN,
Judge. [250]

Due service of the foregoing citation on appeal, together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee. [251]

[Endorsed]: Filed May 25, 1931.

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,
Western District of Washington,
Northern Division,—ss.

To Walter S. Osborn, as Trustee in Bankruptcy for Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Co., a Corporation, Bankrupts and Appellees, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an order allowing an appeal from the District Court of the United States for the Western District of Washington, Northern Division, in a certain matter styled as above, wherein Robert W. Irwin Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why said order upon petitions for review of Robert W. Irwin Company, a corporation, and Ketcham & Rothschild, Inc., a corporation, entered in the above styled cause by the above court on May 1st, 1931, rendered against the said Robert W. Irwin Company, a corporation, should not be corrected and why speedy justice should not be done to the petitioner in that behalf.

WITNESS the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court for the Western District of Washington, Northern Division, this 25 day of May, 1931, and in the One Hundred Fifty-fifth year of the Independence of the United States of America.

BOURQUIN,
Judge. [252]

Due service of the foregoing citation on appeal, together with the receipt of a true copy thereof, is hereby acknowledged this 25 day of May, 1931.

EGGERMAN & ROSLING,
Attorneys for Trustee. [253]

[Endorsed]: Filed May 25, 1931.

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

To Ketcham & Rothschild, a Corporation, and Irwin & Company, a Corporation, and Poe, Falknor, Falknor & Emory, Their Attorneys, GREETINGS:

You and each of you are hereby notified that in a certain case in bankruptcy in and for the United States District Court for the Western District of Washington, Northern Division, entitled "In the Matter of Renfro-Wadenstein, a corporation, and Renfro-Wadenstein Furniture Company, a corporation, Bankrupts," on the petitions of Ketcham & Rothschild and Irwin & Company for reclamation

of certain furniture, accounts and proceeds wherein Ketcham & Rothschild and Irwin & Company are petitioners, and W. S. Osborn, as the duly qualified and acting Trustee of the estate of the above-entitled bankrupts, is the answering defendant, an appeal has been allotted W. S. Osborn as Trustee of the estate of the above-entitled bankrupts from the portions of the order of the District Court of the United States for the Western District of Washington, Northern Division, which are adverse to the Trustee on the above petitions. You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, thirty days after the date of this citation to show cause, if any there be, why the order and decree [254] appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court for the Western District of Washington, Northern Division, this 25th day of May, 1931.

BOURQUIN,
Judge.

Due service of the foregoing citation is hereby admitted by the above-named petitioners and each of them by their solicitors of record this 25th day of May, 1931.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Petitioners, Ketcham & Rothschild and Irwin & Company. [255]

[Endorsed]: No. 6535. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Company, a Corporation, Bankrupts. Walter S. Osborn, as Trustee in Bankruptcy for Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Company, a Corporation, Bankrupts, Appellant, vs. Ketcham & Rothschild, Inc., a Corporation, and Robert W. Irwin Company, a Corporation, Appellees, and Ketcham & Rothschild, Inc., a Corporation, Cross-Appellant, vs. Walter S. Osborn, as Trustee in Bankruptcy for Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Company, a Corporation, Bankrupts, Cross-Appellees, and Robert W. Irwin Company, a Corporation, Cross-Appellant, vs. Walter S. Osborn, as Trustee in Bankruptcy for Renfro-Wadenstein, a Corporation, and Renfro-Wadenstein Furniture Company, a Corporation, Bankrupts, Cross-Appellees. Transcript of Record. Upon Appeal and Cross-Appeals from the United States District Court for the Western District of Washington, Northern Division.

Filed July 23, 1931.

PAUL P. O'BRIEN,
Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

By Frank H. Schmid,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6535.

In the Matter of RENFRO-WADENSTEIN and RENFRO-WADENSTEIN FURNITURE COMPANY, Bankrupts.

ORDER RE PRINTING OF EXHIBITS.

It appearing that the parties hereto thru their respective counsel have stipulated that all exhibits on the appeal and on the cross-appeal shall be excluded from the printed record,—

IT IS HEREBY ORDERED that all exhibits, whether on the appeal or on the cross-appeal herein, shall be excluded from the printed record.

Dated: San Francisco, Calif., August 10, 1931.

WM. H. SAWTELLE,
U. S. Circuit Judge.

O. K.—POE, FALKNOR, FALKNOR, & EMORY,
For Cross-Appellants.

O. K.—EGGERMAN & ROSLING,
For Trustee.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6535.

In the Matter of RENFRO-WADENSTEIN and RENFRO-WADENSTEIN FURNITURE COMPANY, Bankrupts.

STIPULATION RE PRINTING OF EXHIBITS.

IT IS HEREBY STIPULATED AND AGREED by and between Poe, Falknor, Falknor & Emory, solicitors for Ketcham & Rothschild, Inc., and Irwin & Company, respectively, and Eggerman & Rosling, solicitors for W. S. Osborn as Trustee of the above-named bankrupts' estate, that all exhibits, whether copied in the records or not, and whether on the appeal or cross-appeal herein, shall be excluded from the printed record on this appeal.

POE, FALKNOR, FALKNOR & EMORY,
Solicitors for Ketcham & Rothschild, Inc., and Irwin & Company.

EGGERMAN & ROSLING,
Solicitors for Trustee.

[Endorsed]: Filed Aug. 10, 1931. Paul P. O'Brien, Clerk.